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ORIGINAL PRECEDENTS

IN

CONVEYANCING,

SELECTED FROM THE MANUSCRIPT COLLECTION OF THE LATE

JOHN JOSEPH POWELL, Esq.

AUTHOR OF THE LAW OF MORTGAGES, WILLS, AND OTHER VALUABLE LAW TREATISES.

Revised and Corrected:

WITH

NOTES AND REMARKS,

EXPLANATORY OF THE

NATURE AND EFFICACY OF THE SEVERAL DEEDS AND OTHER ASSURANCES CONTAINED IN THE COLLECTION.

By CHARLES BARTON,

OF THE INNER TEMPLE, Esq.

VOL. I.

LONDON:

Printed for W. CLARKE and SONS, Law Bookfellers, Portugal-Street, Lincoln's Inn.

1802.

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ADVERTISEMENT.

THE Collection of Precedents, with which the Profeſſion is now preſented, was purchaſed by the Publiſhers from the late Mr. POWELL's Executrix; no doubt, therefore, can reaſonably be entertained of its authenticity; and from the great utility in practice of accurate forms of the different ſpecies of Aſſurances, and the juſt celebrity of Mr. POWELL, as a CONVEYANCER, they are induced to hope that an extenſive Collection of ORIGINAL PRECEDENTS like the preſent, cannot fail to prove an highly acceptable and valuable acquiſition to the Public.

A Collection of Precedents, obtained ſolely from the opportunities afforded by actual PRACTICE, will, generally, be more or leſs incomplete, for want of an equal and uniform variety of the ſeveral ſpecies of Aſſurances of which it is compoſed. Where this defect was diſcovered in the preſent collection, it has been ſupplied by the EDITOR, either from his own private collection, or by drafts expreſsly prepared for the purpoſe.

Deeds founded upon principle will vary in their form according to the tendency of the principle by which they are governed; and as Mr. POWELL (like all other men of independent abilities,) occaſionally entertained opinions which, however conſonant with genuine notions of law, were not in every inſtance implicitly adopted by his Cotemporaries, ſome of the precedents admitted into the collection may be thought to vary from thoſe which the Student has been accuſtomed to meet with. Theſe variations, and the reaſons upon which they were founded, the Editor, from his long intimacy with the Author, has had peculiar opportunities of knowing; and as the

Manuſcripts which have now come to his poſſeſſion, will probably enable him to account for many of them, without truſting ſolely to the fallacy of his own recollection, he ſhall, as often as he can, endeavour to do it from that ſource; and in other caſes a ſimilar attempt will be made, by quotations from ſuch other of the Author's writings as are in print.

But as the Conveyancer will be but feebly prepared to ſecure the intereſts of his Client, by an acquaintance with the FORMS alone of Deeds, without a knowledge of the principles upon which they are conſtructed, and the objects they are reſpectively calculated to effectuate, the Editor has introduced ESSAYS, or ELEMENTARY DISSERTATIONS on the NATURE and USE of the different Species of Aſſurances contained in the collection; and ſubjoined occaſional NOTES and REMARKS explaining the EFFECT and OPERATION of the ſeveral ſtipulations contained in them; together with References to ſuch Books and Caſes, whence any further information which the Student may be deſirous of acquiring upon the ſubject, may be moſt readily obtained.

In executing this part of his intentions, the Editor feels himſelf called upon to apologize to the profeſſion for having occaſionally referred to the "ELEMENTS OF CONVEYANCING." This he would have avoided, had there been any other compilation to which he could have referred with equal eaſe; but the very ſhort time allowed to him by the pledge which the Proprietors had previouſly given to the profeſſion, for commencing the publication of a ſelection to be made from *fifteen manuſcript volumes in quarto*, rendered it impoſſible for him in many inſtances to refer to more pointed authorities. He alſo imagined that a reference to ſome general treatiſe might often be more convenient to the generality of thoſe by whom he conceived a work of this nature moſt likely to be purchaſed, than perpetual recurrences to diſtinct treatiſes and caſes, which might not be always within the immediate reach of every Practitioner.

The recent date of many of the drafts contained in this collection, may poſſibly occaſion an apprehenſion to be generated in the public mind, leſt a diſcloſure ſhould be made by their publication, of

the private arrangements of individuals; this apprehenſion has not eſcaped the Editor's attention, and he thinks he can venture to aſſert, that wherever concealment could be deemed at all neceſſary, it has been effected.

This Day were published, in Royal Octavo,

PART I. AND II.

(PRICE 5s. EACH,)

OF

ELEMENTS

OF THE

SCIENCE OF CONVEYANCING;

COMPRISING

I. The Nature of the several Species of *Real Property.*

II. The Estates and Interests which may be had in such Property.

III. The Injuries of which those Estates are susceptible, with the means of redressing them.

IV. The Nature and Operation of the different Species of Assurances used in transferring them from one Person to another.

V. The Mode in which they will descend, &c. on the Decease of the Owner.

To which are prefixed,

CURSORY REMARKS

ON THE

STUDY AND PRACTICE OF CONVEYANCING;

Including a Course of Reading, and List of Books for the Use of Students and Practitioners,

AND A

SYLLABUS

Of the Remainder of the Work.

By CHARLES BARTON, of the *Inner Temple,* Esq.

London: Printed for W. CLARKE and SONS, Portugal-Street, Lincoln's-Inn.

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OF

AGREEMENTS.

PRELIMINARY OBSERVATIONS.

VARIOUS and important as are the topics which preſent themſelves to a ſtudent in the ſcience of conveyancing, There does not, ſays Mr. POWELL, in his *Eſſay on* CONTRACTS (*a*), appear to be any which opens ſo wide and extenſive a field for inveſtigation as the ſubject of Agreements.

In preſenting the ſtudent with an OUTLINE of the law of AGREEMENTS (*b*), it will be proper to conſider,

(*a*) Intr. iii.

(*b*) Generally ſpeaking, every agreement muſt now be in writing, for by *ſtat.* 29, *Car.* 2, *c.* 3. (uſually ſtyled the ſtatute of frauds), it is enacted, that, "no action ſhall be brought whereby to charge any perſon upon an agreement made upon any conſideration of *marriage*, or upon any *contract or ſale of lands, tenements, or hereditaments*, or *any intereſt in or concerning the ſame*, or upon *any agreement* that is not to be performed *within the ſpace of one year*, from the making thereof, unleſs the agreement upon which ſuch action ſhall be

NATURE.

Diviſion of the ubject.

I. The general nature of agreements.

II. Who are capable of binding themſelves by agreement.

III. What may legally be the ſubject of an agreement; and

IV. The conſideration neceſſary to ſupport an agreement.

The nature of agreements.

I. *The general Nature of Agreements.*

Definition.

An agreement is defined by the Civilians (*a*), to be *duorum pluriumve in idem placitum conſenſus, obligationis licitè conſtituendæ vel tollendæ cauſa datus*; that is, the conſent of two or more perſons with reſpect to the ſame thing, given with the intention of lawfully conſtituting or diſſolving ſome obligation; or, as more concisely, and perhaps more accurately expreſſed by another writer, "*aggregatio mentium in re aliqua facta vel faciendâ*," under which definition it includes every ſpecies of legal aſſur-

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brought, or ſome memorandum or note thereof, ſhall be in *writing, and ſigned by the party* to be charged therewith, or ſome other perſon thereto, lawfully authorized." Still, however, *parole* agreements are admitted under particular circumſtances, (beſides ſome ſpecific exceptions mentioned in the ſtatute), where ſuch admiſſion cannot endanger, the recurrence of the miſchiefs the ſtatute was intended to guard againſt. So much of the law of agreements, however, as relates to agreements *in writing*, ſeems ſufficient to affix to a collection of precedents of *written forms* of this ſpecies of aſſurance.

(*a*) See Plowden, Com. 17 a.

ance, (except, perhaps, wills, fines, and recoveries), by which any right or intereſt can be transferred; but in its more common and appropriate acceptation, and that in which it is here intended to be conſidered, it ſignifies a contract in writing, expreſſing a *preſent intention* of the parties to receive or part with ſome property, right, or intereſt, at a *future period;* and as thus defined, is uſually made preparatory to ſome more formal and ſolemn inſtrument. NATURE.

Agreements for this purpoſe are either, 1ſt, ſimple or abſolute, or 2dly, conditional. Agreements abſolute and conditional.

An agreement is ſaid to be *ſimple* and *abſolute*, where the party ſtipulating, obliges himſelf *abſolutely and unconditionally* to perform the thing concerning which the ſtipulation is made. It is ſaid to be *conditional* where the performance is made to depend upon the happening of ſome event which is either uncertain in itſelf, or was ſo in the imagination of the parties at the time of contracting (*a*).

(*a*) Conditions muſt be conſiſtent with the nature and main object of the agreement, for if repugnant to the nature of the contract entered into, they will be void. *Co Lit.* 206 *b.* *Cro. Jac.* 596. 2 *Vern* 233.

But we muſt be careful to diſtinguiſh between actual *conditions* annexed to agreements, and mere *circumſtances* only, which, though they may ſeem to import a condition, yet are only *modal*, neither annulling, ſuſpending, nor altering the obligation itſelf, but relating ſolely to the *manner of performing* it; as for inſtance, where it is ſtipulated that the agreement ſhall be performed at a certain *day*, or in a certain *place*, (of which nature are the collateral or incidental circum-

PARTIES.

Who may bind themſelves by agreement.

II. *Who are capable of binding themſelves by Agreement.*

An agreement being an act of the *mind*, it is eſſential that the parties contracting ſhould be capacitated to give that free and abſolute aſſent to the terms of ſtipulation (*a*), which juſtice requires ſhould be given to every contract calculated to bind the repreſentatives of the parties; it becomes neceſſary, therefore, to inquire who are, and who are not, deemed in the eye of the law capable of giving ſuch aſſent; and alſo what circumſtances have been held to be a ſufficient indication of it.

Perſons capable of aſſenting.

Conſent is an act of *reaſon*, accompanied by deliberation, and ſuppoſes, in the words of *Barbeyrac, Grot. l.* 2. *c.* 11. *ſ.* 5. 1ſt, *Un pouvoir phyſique de conſentir*; 2dly, *un pouvoir morale*; 3dly, *un uſage bien ſerieux & parfaitement libre de ſes deux ſortes de pouvoirs. Puff. L. Nat. & Gent. Lib.* 3. *c.* 6. & 3 *n.* (1). That is, a *phyſical* power of conſenting, a *moral* power, and a deliberate and free *uſe* of thoſe powers. Perſons wanting either of theſe requiſites, either actually or

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ſtances, generally inſerted in agreements for the purchaſe of eſtates), ſuch ſtipulations are not to be conſidered as importing *conditions* effecting the *giſt* of the contract, and binding the parties to a *rigid* compliance, but as *modal circumſtances* only which will admit of compenſation in damages.

(*a*) *In omnibus rebus que dominium transferunt concurrat oportet affectus ex utraque parte contrahentium; nam ſive ex venditio ſive donatio ſive conductio ſive quælibet alia cauſa contrahendi fuit, niſi animus utriuſque conſenſit, perduci ad effectum id quod inchoatur non poteſt.*

PARTIES.

in conſideration of law, are conſequently incapable of entering into any efficient agreement.

Idiots, Infants, &c.

Under this deſcription of diſability, evidently come idiots, lunatics, and infants, as being all more or leſs deſtitute of deliberation and reflection (*a*). Whence it follows that all contracts entered into by ſuch perſons during their ſtate of mental debility, are utterly void (*b*).

Perſons non-compos.

But as with reſpect to lunatics it is poſſible that an *appearance* of inſanity may be *aſſumed* for the purpoſes of fraud, the policy of the law will not permit a *non compos* to take advantage of his own incapacity, by pleading, on the return of his reaſon, his previous diſability (*c*); but as the

---

(*a*) *Furioſus nullum negotium gerere poteſt quia non intelligit quod agit. Infans et qui infantiæ proximus eſt non multum a furioſo diſtat.* Inſt. Lit. 3 T. 20. ſ. 8.

(*b*) It was formerly much agitated in the Courts whether deeds, and other ſolemn inſtruments of idiots, &c. were actually void *ab initio*, or only *voidable*; but the caſes in which it has been held that the deeds of ſuch perſons are not abſolutely *void*, but only *voidable*, appear to proceed upon the notion that *non eſt factum* cannot be pleaded to them, becauſe of their having the *form*, though not the operation, of deeds, and therefore cannot be void without ſhewing the ſpecial matter; but the better opinion ſeems to be, that as ſuch an imbecility goes to the gift of the action, and proves the contract a nullity, it may be taken advantage of on the *general iſſue*. See 1 *Pow. Contr.* 11. 1 *Fonb. Tr. Eq.* 47. *n (d;) ſed vide*, alſo Yates *v.* Bowen. *Stra.* 1104.

(*c*) The old caſes relative to this point are contradictory, but the poſition here advanced ſeems to be moſt conformable to the preſent doctrine. See the contrary opinions on this ſubject, and the reaſons on which they are founded, collected and obſerved upon. 1 *Pow. Contr.* 14.

PARTIES. law is as anxious to protect real imbecility, as to discourage fraud or dissimulation, it has been holden, on the construction of *Stat.* 17. *Ed.* 2. *c.* 9 and 10, (*de prerogative regis*), that if the idiot be really found to be such, by *inquisition of office* on the writs *de idioto*, or *lunatico inquirendo*, any contracts or alienation, he may have improvidently entered into to his prejudice during the period of his imbecility, may be avoided on a *scire facias* by the king, who is bound, as *pater patriæ*, to protect his subjects in the due enjoyment of their rights and property. See Beverley's case, 4 *Co.* 123 *b.* Attorney General *v.* Parkhurst. 1 *Chan. Ca.* 112.

And, if the *non compos* continue so for life, his acts are avoidable by his *heir*, or other representatives, for it would be highly unreasonable, that the representatives should be bound by the acts of an ancestor who was incapable of knowing what he did.

Incapacity of Infants &c. does not extend to acts of *record.*

This liability of contracts to be avoided, on account of the imbecility of the mind of the contracting party, does not, however, it is to be observed, extend to acts done in a *Court of Record*, as fines, recoveries (and uses declared of them, which are a part of the assurance) recognizances, and the like, which neither the parties nor their representatives are permitted to avoid. "But, (per *Hobart, Ch. Just.*) note the reason, which is not that the law *binds* such persons, for therein *jura naturæ sunt immutabilia* still, but clean contrary, because the law finds them persons *not so disabled*, nor admits the averment of such disablement, because it is certified by the invincible and indisputable credit of the judge, that they were perfect and able persons: and so here is a law of policy that doth not cancel the law of nature, but doth only bound it in point of form and circumstance." For which reason neither an infant, nor a married woman,

are permitted to avoid a fine, &c. though their acts, like those of infants, are in general (as will be seen hereafter), either absolutely void or avoidable. Needler *v.* Bp. Winchester, *Hob. Rep.* 220.

Who shall be deemed an Idiot, &c.

With respect to who shall be deemed an idiot, *non compos*, or lunatic, *Sir William Blackstone*, 1 *Bl. Com.* 302, describes an *idiot* to be one that has *no understanding from his nativity;* and a *lunatic*, one that *has had understanding*, but who has by some accident *lost the use of his reason;* or, more properly, one that has *lucid intervals*, sometimes enjoying his senses, and sometimes not; but under the general name of *non compos mentis* (which Sir *E. Coke* says, is the most legal name), are included not only *idiots* and *lunatics*, but persons under *phrenzies*, or who have lost their intellects by disease; or such, in short, as *by Courts of Law or Equity are judged to be incapable of managing their affairs. Ib.* 304. It is not, therefore, the person's being of a *weak understanding* alone, or the foolishness of the bargain, that is sufficient to invalidate the contract. For, *per Holt, Justice*, Bath and Montague's case, 3 *Chan. Ca.* 28, the country would have enough to do, if they were to examine into the wisdom or prudence of men in disposing of their estates; be a man, therefore, wise or unwise, if he be *legally compos mentis*, he is the disposer of his own property; and *stet pro ratione voluntas.* And per Sir *J. Jekyll*, M. R. the court will not measure the size of people's understanding or capacities.

Inebriety.

Nor is inebriety, though in truth a temporary insanity, deemed a sufficient ground to vacate a deed or agreement entered into under that influence; for this were to encourage drunkenness, unless, indeed, such weakness or inebriety were worked upon in the one case, or induced in the other, by the fraud and contrivance of the other parties.

PARTIES. Ofmond *v.* Fitzroy, 3 *P. Wms.* 126. See Johnſon *v.* Medlicote, 3 *P. Wms.* 130, *n.* Cory *v.* Cory, 1 *Vez.* 19, *ibid* (*a*).

Incapacity of infants to contract.

An infant (or perſon under the age of twenty-one years), is likewiſe incapable of contracting for an alienation by *deed* of any part of his property, he being in the eye of the law equally deficient in the neceſſary capacity to aſſent to any alienation, as an idiot or lunatic; though it has been endeavoured to diſtinguiſh between ſuch deeds as give an *authority* only; and ſuch as convey an *intereſt*; the firſt being abſolutely *void*, and the other *voidable* only, yet the better opinion ſeems to be, that there is the ſame reaſon to make them *both* void, unleſs, indeed, in the ſingle caſe of a *feoffment*, which is holden to be *voidable* only by reaſon of the *ſolemnity of the conveyance* (*b*). *Perk. ſ.* 12. See 1 *Pow. contr.* 32. *Cro. Car.* 502. 1 *Fonb. Eq.* 73, *n.* (*y.*) 76. *n.* (*z.*) *n.* (*a*) and 77, 80, (*n*). (*b*).

(*a*) See ſome able obſervations on the general principles of caſes of inſanity, and the difficulty of aſcertaining the legal competency of the mind to the act in which it is engaged by the nature of the act itſelf. By *Thurlow Ch.* in Attorney-General *v.* Parnther, 3 *Brow. Ca.* 441.

(*b*) But ſee Zouch *v.* Parſons, 3 *Bur.* 1801. where the Court of King's Bench appears to have adopted the diſtinction taken by Perkins, that ſuch deeds only of an infant as do *not* take effect by delivery are void, whilſt thoſe which do ſo take effect are only voidable; upon which diſtinction Lord Mansfield obſerves, that letters of attorney, and other deeds which delegate a mere *power* without conveying an *intereſt*, are excluded out of the *latter* ſpecies of deeds, and conſequently inoperative.

PARTIES

But though conveyances in *pais*, by an infant, are uniformly void, yet conveyances by *act of law* are void, or not according to their *tendency*, for the disability of an infant (analogous to that of *non compos*), to assent to an act in pais operates solely in discharge of *himself*, (that he may not be overcharged by the cunning of others), and not to liberate from their engagements those with whom the infant may have contracted. And though, therefore, it has been said that contracts must be mutual, and both parties must be bound, or neither; yet for the reasons before given, this does not extend to contracts entered into with infants by persons of full age. For an adult knows with whom he contracts, and shall not be relieved against his own folly; nor shall that be turned to the infant's prejudice, which was designed as a protection, and security to him against his disadvantageous contracts (*a*), and these observations apply equally to *idiots*. The validity of these acts depends, therefore, whether they appear upon the face of the transaction to be *beneficial* or prejudicial to *the infant*, if they be prejudicial they will be *absolutely void*; but if beneficial, they will be voidable or not at *the infant's election*. And although, therefore, the surrender of an infant lessee by *deed* is void, yet his surrender *in law*, by acceptance of a new lease, will be void or not according to the *terms* of such lease. If it *increase* his *interest*, or *decrease* his *rent*, it will be good, but if it do neither, or the reverse of these, it will be void. *Cro. Car.* 502.

Distinction between contracts beneficial and prejudicial.

(*a*) See Smith *v.* Bowin, 1 *Mod.* 25. 1 *Vent.* 51. Farneham *v.* Atkins, 1 *Keb.* 446. Foresters Ca. *ib.* 41. Holt *v.* Clar, *Stra.* 937. 9. *Vin. Abr.* 393. *Pl.* 4.

PARTIES.

And ſo in all other caſes, if an agreement with an infant be without an appearance of benefit to him, it will be void (*a*). And upon this principle it is, that a bond with a penalty, although given *for neceſſaries* was held to be void; for it never can be for his benefit to enter into a penalty. Williams *v.* Williams, 1 *Brow. Ch. Ca.* 152. 1 *Roll. Ab.* 727, *pl.* and ſee 8 *Co. Lit.* 172, *a. Moor.* 679. *Cro. Eliz.* 620, 700, and 1 *Fonb. Eq.* 77, *n.*

Whence infants incapacity proceeds.

The incapacity of an infant, it is to be obſerved, proceeds not ſo much upon the *actual indiſcretion* of the party contracting, as the want of a *legal capacity* to contract; for, it is ſufficient that they want diſcretion in *preſumption of law*, which every perſon does without reference to his ability or judgment, who has not arrived at the age of twenty-one years. But as this rule of law, if univerſally purſued, would prejudice thoſe very intereſts which it was eſtabliſhed to protect, an exception has been admitted in all caſes where the obſervance of the rule would counteract its object, *ceſſante enim ratione ceſſat et ipſa lex.* Wherefore, an infant is bound even at *law* by contracts for his *diet*, *lodging*, *apparel*, neceſſaries, learning, and the like. Leſt, however, this purpoſe ſhould be diverted from its legitimate end, the law will not ſuffer it to be extended beyond the neceſſity which gives uſe to it. And therefore, though

Exception to infants in capacity to contract.

(*a*) Hence it is prudent for the truſtees of infants, where any doubts can reaſonably be entertained, whether a meaſure propoſed to be adopted, affecting the property of their *ceſtui que truſt*, to apply to the Court of Equity, and act under its direction. See Hallett *v.* James, cited 1 *Fonb*, *Eq.* 79, *n.*

bound by contracts for *neceſſaries*, he will not *at law* be bound by thoſe he may enter into for the payment of *money borrowed for the purpoſe of paying for ſuch neceſſaries*; "for he may miſapply the money and convert it to ſome other uſe;" and, therefore, the law truſts him only at the *peril of the lender*, who muſt either lay it out for him, or ſee that it is properly applied. In *Equity*, however, there is this diſtinction, that if the money lent to an infant for the payment of neceſſaries be *actually ſo expended*, it will be conſidered as a valid debt, and he will be compelled to repay the money borrowed. See *Cro. Jac.* 494, 320. *Cro. Eliz.* 920. 2 *Bulſt.* 69. 3 *Bur.* 1719. 1 *T. R.* 41. *Cro. Jac.* 494. 3 *Salk.* 196. 1 *T. R.* 40, 42. Farneham *v.* Atkins, 1 *Keb.* 446. *Cro. Car.* 303, 306. 1 *Salk.* 387, 279. 1 *P. Wms.* 559. PARTIES.

And the Court of Chancery, which in all caſes, acts upon principles of ſubſtantial juſtice and natural equity, (and to whom the cuſtody of infants, officially belongs) frequently interpoſes, and holds infants to their contracts, when the *law*, from the preceding principles, would annul them; for it is to be conſidered, that, if no agreements with infants, unleſs for actual neceſſaries, were in any caſe to be binding, they would, whilſt protected from the diſadvantageous bargains, be at the ſame time prevented from the benefit of ſuch as might be beneficial to them; for who would treat with thoſe who were not bound by their contracts? the Courts of Equity, therefore, very properly conſider the intrinſic nature of the contract, the circumſtances under which it was entered into, and the pernicious or beneficial effects it is calculated to produce to the infant, and vacates or eſtabliſhes it accordingly. 9 *Mod.* 104. Earl of Cheſterfield *v.* Lord Cromwell, 1 *Eq. Ca. Abr.* 287.

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Marriage articles by infants.

Upon theſe conſiderations ariſes the interference of the Court of Chancery to reſtrain infants from reſcinding agreements entered into upon their marriage; for it is to be recollected, that marriage agreements entered into for the ſettlement of the property of the parties, are not *original*, but in the nature of *acceſſary* contracts. "The principal contract is the *marriage* itſelf, which male infants at *fourteen*, and female infants at *twelve*, are deemed of capacity to enter into with the conſent of their parents or guardians. As ſoon, therefore, as the marriage is had, the *principal* contract is executed, and cannot be reſcinded even at *law*; ſo that it is then conſidered on the ſame footing as contracts binding on the ground of neceſſity; the eſtate and capacity of the parties are immediately altered; the children born of the marriage are equally purchaſers under both father and mother, ſo that were the parties permitted to reſcind ſuch contracts, the intereſt of third perſons (*i. e.* the iſſue) would be affected by it. Then, as the law has entruſted the parents and guardians of infants with the direction of the *principal* contract, *i. e.* the *marriage* of their children or wards, and conſiders the children, when acting under that faction, as bound by their aſſent, it ſeems perfectly conſiſtent with the principles of equity, that they ſhould be bound, acting under the ſame ſanction, by their aſſent to the *acceſſary* contract reſpecting their *property*." See 1 *Pow. Contr.* 42.

And, indeed, if ſuch agreements were not to be binding upon the infant, his privilege of not being generally bound to the execution of contracts, benignly provided by the law for his advantage, would in all caſes where the property of the infant conſiſted in *money* operate the other way; for the primary contract of marriage being binding, it muſt neceſſarily be followed by its legal conſequences,

one of which would evidently be to give the husband the absolute disposal of the infant's property immediately upon the marriage. See cases illustrating and exemplifying these observations: and whether, therefore, the estates of the infant be in possession, or be choses in action, or depend upon a contingency, they will be equally bound. And with respect to his personal property, he has ever been deemed to be bound by an *implied* agreement *inferred* only from circumstances. A woman infant may also, by an agreement entered into on her marriage, wave her right of dower and thirds incident by law to the act of marriage. 1 *Fonb. Eq.* 67, *n.* (*y.*) Theobald *v.* Duffay, 9 *Mod.* 101. 1 *P. Wms.* 574. Harvey *v.* Ashley, 3 *Atk.* 613. Price and Seys, *Barnard*, 117. Blois *v.* Hereford, 2 *Vern.* 501. See Drury *v.* Drury, 5 *Brow. Par. Ca.* 570. Vizard *v.* Longdale, 1 *Vern.* 55. PARTIES.

But these positions respecting the obligation of infants to perform the contracts, entered into by them in contemplation of marriage, must not be admitted without some distinctions; for, if by reason of any collusion, the provision made the wife be inadequate to her settled fortune, and any part of it consist of choses in action, or other personal interests not reduced into possession during the marriage, Courts of Equity will not permit her assent to the agreement to deprive her of the legal interest she may have in them by surviving her husband. See Cases, 1 *Pow. Contr.* 47. And so too it should seem, that the preceding observation upon this head must at present be confined to the *personal* property of the infant; and it appears to be doubtful how far a female infant will be bound by agreements entered into during her mi- Exceptions to the validity of marriage articles by infants.

PARTIES. nority reſpecting her *real* eſtate. See Caruthers *v.* Caruthers, 4 *Bro. Ch. Ca.* 502. Cannel *v.* Buckle, 2 *P. Wms.* 243, and the caſes collected there, *n.* 2, and in 1 *Fonb. Eq.* 73, *n.* (*y.*) and 1 *Pow. contr.* 48, whence it appears to be amongſt other things eſſential, that the ſettlement be made before marriage, that the uſes of it ſhould be fair and reaſonable, and that there be iſſue of the marriage. And with reſpect to male infants the rule is ſtill more preſcribed. See *ibid.* Slocome *v.* Glubb, 2 *Brow. Ch. Ca.* 543, and Coventry *v.* Coventry, 2 *P. Wms.* 222.

Capacity and incapacity of feme covert.

But a woman, though of *full* age, is incapable *after marriage* of binding herſelf or huſband by any agreement in *pais*, ſhe being in contemplation of law under the dominion and coercion of her huſband, and conſequently having no moral capacity to aſſent to any contract reſpecting either his property, or her own. 1 *Pow. Contr.* 59. 1 *Bac. Abr.* 68. *Salk.* 387. Harris *v.* Lee, 1 *P. Wms.* 483. A diſability which proceeds upon the conſideration that as the law has veſted their property in their huſbands, they would, if allowed to bind *themſelves* by contract, be liable to engagements without any means of anſwering them, and if allowed to bind their huſbands, they might, by the abuſe of ſuch power, involve their huſband's family in ruin. See 1 *Fonb. Eq.* 90, *n.* (*h.*)

What has been before obſerved, therefore, in reſpect of money borrowed by infants for neceſſaries, even though actually applied for ſuch purpoſe, is equally true at *law*, in reſpect of *feme coverts*; and the ſame diſtinction alſo prevails in *equity* with reſpect to caſes when the money borrowed *was*, and when it was *not*, ſo applied. See *Prec. Chan.* 502. Hains *v.* Lee, 1 *P. Wms.* 483.

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When acts of feme covert good.

But in cases where no injury can arise to the husband, the acts of the wife will be good; though a wife may, without her husband, execute a naked authority, whether given before or after marriage, Godolphin *v.* Godolphin, 1 *Vez.* 21. Peacock *v.* Monk, 2 *Ib.* 191. So though both an interest and authority pass to the wife, yet if the authority be *collateral* to the interest, it may be executed by the wife alone, Gibbons *v.* Moulton, *Finch. Rep.* 346; and for the same reason she may convey lands, in performance of a condition, *Sir Wm. Jones*, 137. But whether a feme covert can, without her husband, convey lands which she held as *trustee*, seems to be not yet decided. See cases and reasonings on this point, *Co. Lit.* 8*vo.* 112, *a*, *n.* 6. and 1 *Fonb. Eq.* 90, *n.* (*b*). As to the power of a feme covert, executrix, see *Went. Ex.* 202.

Wife's separate property.

There is also with respect to feme coverts, a further distinction in *equity* (*a*), by which a wife may in certain cases, which will be afterwards mentioned, have property separate from and independent of her husband, in respect of which contracts entered into will be equally binding upon her as if she were sole (*b*). Grigby *v.* Cox, 1 *Vez.*

(*a*) This distinction, though unknown to the *ancient* common law, was afterwards recognized by them, in the case of Ringstead *v.* Lanesborough, and Barwell *v.* Brooks, cited 1 *Term Rep.* 6. Corbett *v.* Poelnitz, *ibid.* but has since been decidedly exploded in the case of Marshall *v.* Rutton, 8 *Term Rep.* 545.

(*b*) And in these cases it is not necessary that her trustees should be parties to the conveyance, unless their assent be expressly required by the settlement, the mere appointment of trustees not being a sufficient ground from whence to infer that such was the intention of the parties, as there must have been trustees in order to secure her the separate property,

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517. Allen *v.* Papworth, 1 *Vez.* 163. Bell *v.* Hyde, *Pre. Chan.* 328. *Gil. Rep. Eq.* 83. Peacock *v.* Monk, 2 *Vez.* 193. Norton *v.* Tarvill. 2 *P. Williams* 144. Standford *v.* Marſhall, 2 *Atk.* 68. Hulme *v.* Tenant and Wife, 1 *Brow. Ch. Ca.* 16. And an agreement entered into by a feme covert with her huſband, in reſpect to ſuch ſeparate property will be valid. Freeman *v.* S. C. Maſon, 2 *Eq. Ca. Abr.* 26. *Pl.* 29. *Bunb.* 205. 2 *Brow. P. Ca.* 378. "And a covenant in articles entered into before marriage, that ſhe ſhall have the diſpoſition of ſuch real and perſonal property as ſhe ſhall acquire during her coverture, will enable her to diſpoſe thereof without fine (*a*). Wright *v.* Lord Cadogan, 6 *Brow. P. Ca.* 156.

And the law is now holden to be the ſame in reſpect of ſeparate property ſo circumſtanced, in which a feme covert has a *legal* eſtate (*b*). See Rippon *v.* Dawding, *Amb.* 565.

(*a*) This, however, was doubted by Hardwicke, Chan. who ſeems to have thought that the power of a feme covert over her ſeparate eſtate, muſt be confined to ſuch part of it as was *perſonal*, for that of her *real* eſtate ſhe could make no diſpoſition during her coverture, unleſs by *fine*, or unleſs ſhe had before marriage reſerved ſuch power to herſelf, by way of truſt, or of a power over an uſe. See Peacock *v.* Monk. 2 *Vez.* 191. "What was then, however, conſidered as doubtful, no longer remains ſo," ſince in Wright *v.* Cadogan, 6 *Br. P. Ca.* 156, an heir at law, on appeal to the Houſe of Lords, was adjudged to execute a conveyance to the party in whoſe favour ſuch an agreement was made. Doe *v.* Staple, 2 *Term Rep.* 684; and ſee Rippon *v.* Dawding, *Amb.* 565.

(*b*) And a feme covert, like an infant, may by aſſent after coverture determined, make prior agreement valid, though otherwiſe void. See 2 *Vern.* 225. *Cowp.* 201.

And in the caſe of Compton *v.* Collinſon, 1 *H. Blac. Rep.* 334, the power of a feme covert over her ſeparate property ſeems to have been carried to a ſtill greater extent than had hitherto been allowed, for in that caſe, a wife living apart from her huſband, was permitted to ſurrender a copyhold eſtate, ſettled to her ſeparate uſe, without the concurrence of her huſband, he having upon the ſeparation covenanted to join in all neceſſary conveyances to ſuch uſes as ſhe ſhould appoint.

And there are many caſes where a feme covert may even at *law* be bound by her ſeparate contracts; as where the huſband has abjured the realm, 1 *Ba. Ab.* 308, or been baniſhed, 2 *Vern.* 104. *Co. Lit.* 133 *a.* If ſhe marry an alien enemy, 1 *Salk.* 116, 1. *Lord Raym.* 147; or be attainted of felony. Newſom *v.* Bowyer, 3 *P. Wms.* 37. So by the cuſtom of London, 10 *Mod.* 6; and according to *Moor* 666, and 9 *Mod.* 43, after divorce *a menſa et thoro.* But in 1 *Roll. Ab.* 343, *pl.* 8, it is expreſsly ſaid, that though huſband and wife be divorced *a menſa et thoro*, the huſband may releaſe a legacy left to his wife, ſuch divorce, even for *adultery*, not diſſolving the marriage. And ſee Acc. 2 *ib.* 301, *pl.* 12. and Stephens *v.* Potty, *Cro. Eliz.* 908. See further caſes and obſervations on this ſubject, 1 *Pow. Contr.* 75, *&c.* 1 *Fonb. Eq.* 113, *n.* (*r.*) 114, *n.* (*f*). *Co. Lit.* 353, *n.* (1).

An agreement entered into by a feme covert, jointly with her huſband, will, if for the benefit of her eſtate, be binding upon her, notwithſtanding her coverture. Rothwell *v.* Widrington, 1 *Vern.* 456.

So, though there muſt be two perſons at leaſt reciprocally aſſenting, in order to conſtitute an effective agreement, and huſband and wife are conſidered at *law* as but one perſon, and therefore, under a moral capacity of entering into any valid agreement with each other; yet

PARTIES. ſuch agreement will in *equity* be valid, and though made without conſideration will be binding, not only againſt the huſband himſelf, and his repreſentatives, but all others, except creditors, unleſs (Beard *v.* Beard, 3 *Atk.* 72,) he has parted with the *whole* of his eſtate to her. See Pawlett *v.* Delaval, 2 *Vez.* 666. Stanning *v.* Style, 3 *P. Wms.* 334. Calmady *v.* Calmady, cited 3 *P. Wms.* 339. Attorney-General *v.* Whorewood, 1 *Vez.* 538, *ſed vid.* Milnes *v.* Buck, 2 *Vez. Jun.* 498 (*a*). And the ſavings of the wife ariſing out of any ſeparate maintenance ſhe may have under ſuch agreement, will be at her ſeparate diſpoſal, and if parted with to the huſband, by way of loan, ſhe will be conſidered as a creditor to that amount againſt him and his repreſentatives. See Stanning *v.* Style, 3 *P. Wms.* 335. Georges *v.* Chancey, cited 1 *Ch. Ca.* 118. And ſuch agreement will be binding on his repreſentatives (*b*). 1 *Vez.* 539. Beard *v.* Nuthall, 1 *Vern.*

(*a*) In this caſe Loughborough, Chan. is reported to have expreſſed a doubt whether a feme covert ought to be conſidered as a feme ſole, *quoad her huſband*, with reſpect to her ſeparate property ariſing from an agreement between them, to the extent to which it had in ſome caſes been carried.

(*b*) But it is to be obſerved, that if the wife do not demand the produce of the eſtate aſſigned to her by her huſband, but he continue wholly to ſupport her as if no ſeparate property had been ſettled upon her, the Courts will not ſuffer an account of ſuch ſeparate property to be carried back beyond the end of the current year, to be computed from the laſt day appointed for the payment of it. See Powell *v.* Hankey, 2 *P. Wms.* 82; and the caſes there cited. But otherwiſe, if the agreement be kept alive by her regularly demanding an account, &c. Warwick *v.* Edwards, 1 *Eq. Ca. Abr.* 140. *pl.* 7. Ridout *v.* Lewis, 1 *Atk.* 269.

427. Cecil *v.* Juxton, 1 *Atk.* 278. Offley *v.* Offley, *Prec. Ch.* 26. PARTIES.

Tenant in tail will be bound by an agreement reſpecting his tail land. Roſs *v.* Roſs, 1 *Ca. Cha.* 171. Tenant in tail.

Having in the preceeding pages conſidered, with as much ſuccinctneſs as the ſubject appeared to admit of, who are, and who are not, by reaſon of their mental capacity, or incapacity, allowed to bind *themſelves* by agreement, I ſhall proceed to conſider who, by reaſon of the quantity or duration of intereſt ſubſiſting in them, are capable of binding *others*, as well as themſelves, by ſuch ſtipulation. Who may bind themſelves and others.

The firſt inſtance I ſhall adduce upon this head is that of a *ceſtui que truſt*, who may not only bind himſelf by an agreement reſpecting the eſtate, but alſo the truſtees, though no party, to the agreement. Cornbury *v.* Middleton, 1 *Chan. Ca.* 173, 208. Ceſtui que truſt.

A corporation being conſidered as one body, will be bound by the agreement of its head. But this obligation will be upon the members in their corporate and not in their individual capacities. 1 *Ventr.* 357, *ſed vid.* As to the latter point, 2 *Vern.* 396. The authority of this caſe, however, appears to be doubtful. And ſee Edwards *v.* Brown, 1 *Lev.* 237. And though the corporation be diſſolved, or changed, yet ſhall it be bound to perform its covenants. *Owen.* 73. 2 *And.* 107. Corporation.

Churchwardens are a corporation, and morally competent to aſſent to a reaſonable agreement, beneficial to the pariſh, and may therefore bind as well the pariſhioners and their ſucceſſors, and the ſucceeding churchwardens. See Martin *v.* Nutkin, 2 *P. Wms.* 266. 2 *Eq. Ca. Ab.* 23. *pl.* 22. Churchwardens.

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Anceſtor.

And the agreement of the anceſtor will bind the heir whether it be in reſpect of freehold lands. Baden *v.* Pembroke, 2 *Vern* 213. Or copyholds. Greenwood *v.* Hare, 1 *Ch. Rep.* 144. Or borough Engliſh, *per Hardw. Ch. Prec. ch.* 640, where the *youngeſt* ſon, as cuſtomary heir, will be bound by his anceſtor's agreements. And though the anceſtor be only tenant for life, yet if the agreement were evidently advantageous to the heir, at the time it was concluded, it will bind him. Chetwynd *v.* Fleetwood, 4 *Brow. Par. Ca.* 435.

Mother.

A mother may, alſo, acting as adminiſtratrix to her huſband, bind her children. Neighter *v.* Sturman, 1 *Vern.* 210.

Women before marriage.

And the covenants or agreements of a woman before marriage, will bind an after-taken huſband (*a*). Baſker-

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(*a*) Where a widow woman previouſly to a ſecond marriage aſſigns over her eſtate to truſtees, for the *children* by her firſt huſband, there appears to be no reaſon to conteſt the validity of ſuch ſettlement. Hunt *v.* Matthews, 1 *Vern.* 408. King *v.* Cotton, 2 *P. Wms.* 358, 674. Newſtead *v.* Searle, 1 *Ath.* 265. Doe *v.* Routledge, *Cowp.* 705. *ex. parte Marſh*, 1 *Ath.* 158. But where ſuch ſettlement has been made for the benefit of *herſelf* alone, without the huſband's privity, it was formerly held to be void, as againſt the huſband, as being in derogation of the rights of marriage. Howard *v.* Hooker, 2 *Ch. Rep.* 42. Carlton *v.* Dormett, 2 *Vern.* 17. Draper's caſe, 2 *Freem.* 29. *Gilb. Lex. Prætor*, 267. Poulſon *v.* Wellington, 2 *P. Wms.* 535. The above cited caſe, however, of Strathmore *v.* Bowes, appears to have very much ſhaken thoſe authorities, as it has a direct and immediate tendency to eſtabliſh the doctrine that a woman may previouſly to, and in contemplation of her marriage, ſo convey her property to truſtees for her own uſe, as to be entirely beyond the reach of her intended huſband.

ville *v.* Baſkerville, 2 *Vern.* 448. "For a man who marries without treaty muſt be content to take his wife as he finds her." Strathmore *v.* Bowes, 2 *Brow. Ch. Rep.* 345. 10 *Mod.* 160, 243. PARTIES.

As it is a maxim of law, that the real eſtate of the wife ſhall not be bound without a fine or recovery. 2 *Co.* 74, 78. 10 *Ibid.* 43, no agreement of the huſband alone will bind the wife. Bryan *v.* Wolley, 4 *Vin. Ab.* 57. *pl.* 19. Unleſs the wife, upon a private examination, *Treat. Eq. fo.* 34, aſſent to ſuch agreement (*a*); or unleſs ſhe reſerve to herſelf, before marriage, a power of diſpoſing of her real eſtate without fine, which ſhe may do either by conveying it in *truſt*, or by reſerving a *power* over an *uſe*. See *Co. Lit.* 326 *b.* (*n.*) Wright *v.* Cadagon, 6 *Br. Par. Ca.* 156. Doe *v.* Staple, 2 *Ter. Rep.* 695. Compton *v.* Collinſon, 1 *H. Black.* 334. And, indeed, ſome doubt may reaſonably be entertained whether the conſent of the wife, upon private examination alone, will be ſufficient to induce the Court to decree a performance of an agreement of the huſband to convey the wife's real eſtate; for though it is ſo ſtated in *Treat. Eq.* (34), a book of no inconſiderable authority; and though the Courts of Equity will take ſuch conſent of a feme covert, where her aſſent is required to the inveſtment of money in the purchaſe of land, of which ſhe will be tenant in tail. (Oldham *v.* Hughes, 2 *Atk.* 453). Yet I have not been able to meet with any caſe in which a

(*a*) And therefore a bill for this purpoſe muſt be filed againſt both huſband and wife, or ſhe will be intended to convey by the compulſion of her huſband, *Treat. Eq.* 34.

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feme covert has been permitted in *equity* to convey an eſtate of freehold, (unleſs a truſt eſtate), by any other means than thoſe required by *law*. And ſee Portington's caſe, 10 *Co.* 42 *b*. But if a feme covert agree to ſell her inheritance, upon condition that ſhe is to have part of the money, and it is accordingly veſted in the hands of truſtees, no after agreement of her's will make it liable to the huſband's contracts. Rutland *v.* Mollineaux, 2 *Vern.* 64.

Tenants in tail.

Tenants in tail, of a legal eſtate, cannot by mere agreement or covenant to convey, even though for a valuable conſideration, bind his iſſue in tail, on the remainder-men, for the iſſue in tail does not claim from the tenant in tail, but from the creator of the eſtate, *per formam doni*, and a Court of Equity, though the iſſue are in the power of the tenant in tail, ſo as to be barred by a particular aſſurance, will not, unleſs that aſſurance be had, deprive them of the title they derive not from the tenant in tail, but the original author of the limitation. 1 *Lev.* 238. 2 *Ventr.* 350. *Hob.* 203. Roſs *v.* Roſs, 1 *Ch. Ca.* 171. Coventry *v.* Coventry, 10 *Mod.* 469. Powell *v.* Powell, *Prec. ch.* 278. Sangen *v.* Wilms, cited *Gil. Rep. Eq.* 164. Unleſs, indeed, (as in the caſe of an exchange of lands), the iſſue enter upon the land, and accept the agreement, in which caſe he ſhall be bound by it; "becauſe by entering upon the recompence which his anceſtor received for the eſtate tail, he makes himſelf a party to the original agreement, and is therefore bound in conſcience to perform it." Roſs *v.* Roſs, 1 *Cha. Ca.* 171. So neither will he be bound by a covenant for further aſſurance. Jenkins *v.* Jenkins, 1 *Lev.* 237. Nor by articles to convey for payment of debts. Herbert *v.* Fream, 2 *Eq. Ca. Ab.* 28, *pl.* 34. Nor by a covenant to levy a fine, though there has been

a decree made for that purpoſe. Weale *v.* Lower, 1 *Eq. Ca. Ab.* 266, cited in Fox *v.* Crane, 2 *Vern.* 306; though Hill *v.* Carr, as reported in 1 *Chan. Ca.* 294, ſeems contrary. PARTIES.

Theſe poſitions muſt, however, be confined to tenants in tail of the *legal* eſtate, as tenants in tail of a *truſt*, or other *equitable* intereſt may bear the entail by leſs ſolemn modes of aſſurance, becauſe thoſe ſpecies of entails being creatures of the Courts of Equity, (not being within the ſtatute *de donis*), are governed by the rules of thoſe Courts, and made ſubſervient to the exigency of circumſtances. Qualification.

Thus it has been held, that a *truſt* eſtate may be barred by a feoffment, or a bargain and ſale. North *v.* Champernon, 2 *Ch. Ca.* 64. Carpenter *v.* Carpenter, 1 *Vern.* 440. Beverley *v.* Beverly, 2 *Vern.* 131. Baker *v.* Bailey, *Ib.* 225. But Lord Cowper doubted whether a deed only, (or a bargain and ſale), executed by *ceſtui que* truſt in tail would bar the remainder-man, or even the iſſue, "in regard a deed may be made at a tavern, or by ſurpriſe, but a recovery is a ſolemn and deliberate act." Legatt *v.* Sewell, 1 *P. Wms.* 87 and ſee Weale *v.* Lower, cited 2 *Vern.* 306. Kirkman *v.* Smith, 1 *Vez.* 260. *Amb.* 518. Burnaby *v.* Griffin, 3 *Vez.* 276. Savin *v.* Thornton, 1 *Brow. Ch. Rep.* 73; and in the caſe cited 1 *Vez.* 260, Lord Hardwicke is reported to have ſaid not only "that it never *had been* determined that a *leaſe* and *releaſe* would bar an equitable eſtate tail, but that he hoped it never *would*." Hence it has now become the common practice to ſuffer a recovery of truſt eſtates, as well as of legal ones; particularly as this may be done without the concurrence of the truſtees; and Barnaby *v.* Griffin, 3 *Vez. jun.* 276. But legal eſtate tail, ſee *copyholds*, Otway *v.* Hudſon, 2 *Vern.* 583, as well as

PARTIES. equitable. Radford *v.* Wilſon, 3 *Atk.* 815; may be barred by a ſurrender alone, unleſs there be a ſpecial cuſtom to the contrary, copyholds not being within the *ſtat. de donis.* And the Lord Keeper, in Otway *v.* Hudſon, thought that a deviſe by *will*, was ſufficient to bar a truſt entail of copyholds; and a ſimilar decree was made in Woolnough *v.* Woolnough, *Prec. Ch.* 228.

And as tenant in tail of the legal eſtate is reſtrained from alienating his eſtate, unleſs by fine or recovery, ſo he cannot by contract or agreement alone, either charge or diſpoſe of the laſting improvements. See 11 *Rep.* 50. *Popl.* 194. and *Pow. Contr.* 127. But if tenant in tail has power to grant leaſes for lives, and covenants to make them, and dies before they are perfected, it ſeems that the heir will be bound by the covenant. See 10 *Mod.* 469.

Teſtator. And as an anceſtor may bind his heir, ſo may a teſtator, or inteſtate, his executors or adminiſtrators, who are included in the perſon of the teſtator or inteſtate, and bound without being expreſsly named. Hyde *v.* Skinner, 2 *P. Wms.* 197.

Attorney. An attorney having an authority may bind his client by agreement entered into on his behalf, and will not be perſonally bound by ſuch engagement, ſo that it be within the limits of his authority. Johnſon *v.* Ogilby, 3 *P. W.* 277. 2 *Eq. Ca. Abr.* 31. *pl.* 40. 5 *Brow. Par. Ca.* 547. But if he act without due authority, or exceed it, he will be himſelf liable. Parrot *v.* Wells, 2 *Vern.* 127. Nor will a general authority given to a ſteward to make agreements with tenants, bind the lord, without his expreſs aſſent be had, or unleſs he have before acquieſced in ſuch agreements, and the agreement be in part executed. 5 *Vin. Abr.* 522. *Pl.* 35.

Aliens. Aliens cannot enter into agreements, upon the prin-

ciple that a communication between the king's ſubjects and perſons of that deſcription might endanger the public ſafety. *Brooke Int. Oblig.* SUBJECT MATTER.

Beſides, being of full age, *compos*, and poſſeſſing a freedom of will, it is further neceſſary for the validity of an agreement, that the parties be in poſſeſſion of all the circumſtances neceſſary to give them a complete knowledge of the intereſt they are about to part with. See Puſey *v.* Deſbouvrie, 3 *P. Wms.* 316. Unleſs it appear that both parties were equally ignorant, in which the contract will be valid, as being as fair for the one as the other. Cann *v.* Cann, 1 *P. Wms.* 726. Pellin *v.* Reader, 2 *Atk.* 587. Jones *v.* Randal, *Cowp.* 37. See alſo on this part of the ſubject the caſes collected. 1 *P. Contr.* 140, 147.

III. *What may be the Subject of an Agreement.*

What may be the ſubject of agreements.

Generally ſpeaking, any kind of right or intereſt, whether of a real, a perſonal, or a mixed nature may be made the ſubject of an agreement.

The firſt thing requiſite in the ſubject of an agreement is, that it be within the power and abſolute control of the party contracting, with reſpect to which, however, a diſtinction ſubſiſts between ſuch agreements as are *executed*, and ſuch as are *executory* only; for it is a known rule of law, that a man cannot by contract *executed* convey or charge any thing in which he has not an intereſt, either *actually* or *potentially* at the *time of the grant or conveyance* "becauſe it is neceſſary, that he who by his contract makes another poſſeſſor of any thing, ſhould firſt be himſelf the proprietor of it." (*a*). *Pow. Contr.* 152.

Difference between agreements executed and executory.

(*a*) In ſome caſes, however, where the ſubject of a contract may ſeem not to be within the reach of the contractor, as not

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Hob. 132. *Co. Lit.* 41, *b. Bac. Max.* 78. *Plow.* 12, 43. *Dy.* 221. *Pl.* 18.

But where the agreement is *executory*, operating as a declaration precedent, and to the perfection of which ſome new act or conveyance is neceſſary, it may be valid, though the ſubject of it be not yet in eſſe, nor any intereſt veſted in the party; but otherwiſe, where no ſubſequent act is requiſite to perfect contract. Thus, a contract with a ſon to ſtand ſeiſed of, after purchaſed lands to his uſe, will be void, not only becauſe a covenant to ſtand ſeiſed preſuppoſes a ſeiſin. *Gilb. Uſes*, 16. but becauſe no new act is neceſſary to perfect the contract. Yelverton *v.* Yelverton. *Cro. Eliz.* 401. 2 *Roll. Ab.* 790. Jones *v.* Morley, *Holt.* 321. But a covenant to *ſettle* after purchaſed lands, or to levy a fine of ſuch lands will be good, becauſe here a new act is to be done to perfect the matter of contract. Took *v.* Haſtings, 2 *Vern.* 97. And ſee *Bac. Max.* 79, 80. where there are ſome appoſite illuſtrations of this diſtinction.

Subject of an agreement muſt be poſſible.

For ſimilar reaſons, no right can be created nor obligation be incurred by an agreement to perform things *naturally impoſſible*. Contracts reſpecting ſuch things are therefore void, and the party undertaking to accompliſh

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being at preſent in exiſtence, yet if it be *incidental* or *acceſſary* to ſomething which is in exiſtence and within the power of the party, it will nevertheleſs paſs, as the future produce of land, &c. "for though the covenantor has not the corn, &c. actually in him, yet he has it ſo *potentially*; for the land is the mother and root of all the fruits, therefore, he that has *that* may grant all fruits that may ariſe upon it afterwards, and the property will paſs as ſoon as the fruits are extant." Grantham *v.* Hawley, *Hob.* 132.

them, ſubject to no action even for damages accruing by reaſon of non-performance; for it cannot be ſuppoſed that what is abſolutely impoſſible can have been ſeriouſly the ſubject of deliberation, for no man in his *ſenſes* deliberates about what is abſolutely out of his power. *Tr. Eq.* 8vo. 211. SUBJECT MATTER.

" But a diſtinction is to be taken between things *phyſically* impoſſible, (the impracticability of accompliſhing which muſt be evident to *all the parties* at the time of contracting) and things not *phyſically* impoſſible, but of which the impoſſibility of accompliſhing ariſes from circumſtances peculiar to the *party contracting*; for in the *latter* caſes, although the main contract will neceſſarily be inoperative on account of the inability of the party to perform it. As if a man contract to ſell an eſtate, the title to which is in another perſon; or the like, yet that will not diſcharge the perſon contracting from being anſwerable in damages to the other party, for any loſs which he may ſuſtain by reaſon of being impoſed upon; for although when a perſon covenants through remiſſneſs, or negligence, and undertakes an impoſſibility, the main *undertaking* muſt be void, ſo far as goes to his capacity of performing, as there is preſumed to be a tacit condition reſerved in the mind of every contracting party, that the thing ſtipulated be practicable to the party ſtipulating, yet, upon default in the ſtipulator, the law will oblige him to anſwer in damages any *detriment*, the other may have ſuſtained by the non-performance, as a *compenſation* for the loſs of the thing contracted for. See Cornwall *v.* Williams, cited 1 *Pow. Contr.* 117. and *per Cur.* in Thornborough *v.* Whiteacre, 2 *Ld. Rayn.* 1164. 6 *Mod.* 305, if a man will for a valuable conſideration, undertake a thing impoſſible with *reſpect to his ability*, that will not make the contract void, for though Phyſical impoſſibility.

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the contract be a fooliſh one, yet it will hold in law, and the party ought to pay ſomething for his folly.

Moral and legal poſſibility.

But a man may bind himſelf to do any thing which is not phyſically impoſſible; and it will be at his peril if he do not perform it. 1 *Roll. Ab.* 419. Cholmley's Caſe, 2 *Co.* 51. The legal diſtinction between a near and a remote poſſibility not being regarded in executory contracts. *Tr. Eq.* 8vo. 212.

The ſubject of every contract muſt, moreover, be a thing *morally* and *legally* as well as *naturally* poſſible to be performed, it is not enough, that an agreement be made with the conſent of the parties, but to make it obligatory, the ſubject of it muſt be ſuch as men have a lawful right of ſtipulating about (*a*); for it would be abſurd that an obligation that derives its ſanction from the law ſhould put us under the neceſſity of doing ſomething which the law prohibits. *Treat. Eq.* 8vo. 223. and it may alſo be fairly preſumed, that where the object of an agreement is contrary to moral rectitude, the contracting party muſt have been taken by ſurpriſe, and could not have given his full and free aſſent to it, beſides that the law by forbiding ſuch an agreement to be made, deprives the contractor of the ability to perform it, and conſequently prevents the other party from acquiring any right to compel its performance.

Things forbidden by law to be the ſubject of contract.

Hence it will be proper to inquire what matters are forbidden by law to be the ſubject of a contract.

(*a*) *Puff. B.* 3. *c.* 7. *ſ.* 6. *Pacta qua contra leges conſtitutioneſque vel contra bonos mores nullam vim habere indubitati juris eſt. Cod. Lib.* 2. *t.* 3. *l.* 6. "A rule evidently drawn from the principles of univerſal juſtice, which, aiming at the prevention of wrong, prohibit agreements which would lead to or encourage wrong." 1 *Fonb. Eq.* 224. *n.* (*s.*)

Things forbidden by law to be the ſubject of ſtipulation, are, 1ſt. Such as enjoin the *commiſſion* of what is either *malum in ſe*, or *malum prohibitum*. 2dly, Such as enjoin the *omiſſion* of that which the intereſts of ſociety require ſhould be performed; and, 3dly, Such as promote or encourage ſuch acts or omiſſions. See Mitchell *v.* Reynolds, 1 *P. Wms.* 191. SUBJECT MATTER.

Within the firſt diſtinction are compriſed all ſuch things as are forbidden either by the evident laws of nature, or the expreſs word of God, as to commit murder, adultery, &c. (*a*). And within the ſecond or *mala prohibita*. (*i. e.* things contrary to the laws of the land), as includes whatever is either repugnant to the welfare of the ſtate; againſt ſome maxim of law; or, in contradiction to ſome poſitive ſtatute (*b*). *Co. Lit.* 206, *b*. Amongſt thoſe that are repugnant to the welfare of Agreements in reſtraint of trade.

(*a*) It is obſervable, however, that with reſpect to the nullity of agreements upon the ſcore of their enjoining or encouraging *mala prohibita*, there is a difference between thoſe which are executory only, and thoſe which are executed, for if a bond be made upon condition that if the feoffor ſhall kill J. S. the bond will be void; yet if a feoffment be made upon a ſimilar condition, the eſtate will be abſolute and the condition void. *Co. Lit.* 206, *b*.

(*b*) There is, however, a difference between agreements, the ſubjects of which are againſt the rules of the *common law*, and thoſe of which the ſubjects are againſt the proviſions of the *ſtatute law*; for if a clauſe in a bond for inſtance, be void, as being againſt the common law, yet the reſt of the bond will be good and available; "for the common law doth divide according to common reaſon, and having made that void, which is againſt law, lets the reſt ſtand." Norton *v.* Simms, *Hob*, 14. Collins *v.* Blantern, 2 *Wilſ.* 351. But if it be void, as againſt the ſtatute law, the whole bond will be void. *Ibid.*

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the ſtate, may be ranked all agreements which have for their object a *general* reſtriction of any kind of trade or commerce. *Alleyn*, 67. or not to exerciſe it with in a period of time. *Broke Title Obligation*, 85. 11 *Co.* 53, *b.* But the ſame objection does not apply to an agreement not to trade in any *particular* place, for "there may happen inſtances wherein ſuch a contract may be uſeful and beneficial, as to prevent a town from being overſtocked with any particular trade; or in the caſe of an old man, who perceiving himſelf to be under ſuch circumſtances of body or mind, as that he is likely to be a loſer by continuing his trade; in this caſe, it will be better for him to part with it for a conſideration; that by ſelling his cuſtom he may procure to himſelf a livelihood, which he might probably have loſt by trading longer."(a) *Per Parker, Ch. J.* Mitchell *v.* Reynolds, *P. Wms.* 191. And the welfare of the ſtate is not concerned in what place a man exerciſes his trade; for, though prohibited from purſuing it in one place, he may follow it elſewhere. See *Cro. Ja.* 596. 2 *Bulſt.* 136. *Jones* 13. *Palmer*, 172. 2 *Stra.* 739. 1 *P. Wms.* 181. The next inſtance of a contract being void on account of its militating againſt the public welfare, is that of an agreement for unlawful *maintenance*. *Carter* 229. 2 *Inſt.* 212.

Agreement of ſheriff for fees,

And upon the ſame ground of public inconvenience, bonds, or agreements entered into with a ſheriff for fees for payment of proviſions, &c. has been held void as capable of being exerciſed for the purpoſe of extortion or oppreſſion. 10 *Mod.* 139. 12 *Ib.* 683. 1 *P. Wms.* 195. *Plow.* 68. 10 *Co.* 100, *b.*

(a) A contract of the latter kind will not, however, be binding, unleſs entered into for a ſufficient conſideration. See caſes 1 *P. Contr.* 168, 192.

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Upon ſimilar reaſons alſo marriage brokerage contracts, for aſſiſtance in promoting marriages are void. Such tranſactions being contrary to the intereſt and happineſs of ſociety; for marriages ought to be promoted and encouraged through the mediation of friends and relations, and not of hirelings." See Arundell *v.* Trevilian, 1 *Ch. Rep.* 87. Key *v.* Bradſhaw, 2 *Vern.* 102. Cole *v.* Gibſon, 2 *Vez.* 503. Smith *v.* Aykwell, 3 *Atk.* 56. 3 *Salk.* 97. 10 *Co.* 76, 102.

Marriage brokage agreements.

Contracts and agreements, the objects of which are contrary to principles of morality and public decorum, are alſo void upon a like principle. It being a rule as well of law as of equity, that *ex turpi contractu actio non oritur.* The caſes referrible to this head, are principally thoſe entered into in conſideration of illicit cohabitation; as to which ſee Turner *v.* Vaughan, 2 *Wils,* 339. Hill *v.* Spencer, *Amb.* 641. Walker *v.* Perkins, 3 *Bur.* 1568. Annandale *v.* Harris, 2 *P. Wms.* 432. Lady Cox's Caſe, 3 *P. Wms.* 339. and ſee 1 *Eſp. Ca.* 13.

Agreements inimical to public decency

And ſo contracts entered into for the purpoſe of evading the law. See Jones *v.* Randall, *Cowp.* 37, 39. All theſe caſes being againſt that maxim or rule of law, which prohibits every thing which is *contra bonos mores.*

Evading the law.

All contracts likewiſe that have any fraudulent object in view are for that reaſon void. Willis *v.* Baldwin, *Doug.* 450.

Fraudulent object.

The ſame principles alſo extend to contracts of an unfair nature in reſpect of their influence on third perſons, although not ſo as between the parties themſelves. See Payton *v.* Bladwell, 1 *Vern.* 240. Redman *v.* Redman, *Ibid,* 348. Gale *v.* Lindo, *Ibid,* 475. Lamlee *v.* Haman, 2 *Vern.* 466. Middleton *v.* Onſlow, 1 *P. Wms.* 768. Pitcairn *v.* Ogbourne, 2 *Vez.* 375.

Agreements affecting third perſons.

This rule is moſt frequently applied to agreements,

Marriage.

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contra fidem tabularum nuptialium, or in derogation of the rights of marriage, by which "the open and public treaty and agreement upon a marriage is forbidden to be leſſened or in anywiſe infringed by any private treaty or agreement." *Tr. Eq.* 268. And Lamlee *v.* Hanman, 2 *Vern.* 500. But it equally applies to every other kind of agreement, as agreements between a debtor and *ſome* of his creditors, to the prejudice of the reſt and the like. See caſes cited, 1 *Fonb. Eq.* 266, *n.* (*x.*)

Creditors.

Puffing.

As to agreements affected by the practice of *puffing* at auctions. See Bexwell *v.* Chriſtie, *Cowp.* 395. Morrice *v.* Twining, 2 *Brow. Ch. Ca.* 326.

Contracts relative to ſuch ſubjects as are prohibited by ſtatute, and are alſo void, as by 23 *Hen.* 6. *c.* 10. See Danby *v.* Nethcot, 10 *Co.* 100, *b.* 5 *Geo.* 2. *c.* 30. See Smith *v.* Bromley, *Dougl.* 696. So agreements for the ſale of offices, by 5 and 6 *Ed.* 6. *c.* 16 (*a*). Law *v.* Law, *Forreſt*, 140. Harrington *v.* Du Chatel, 1 *Brow. Ch. Ca.* 124.

Uſury.

And ſo agreements for more than legal intereſt are void by 12 *Ann. ſt.* 2. *c.* 16. 14 *Geo.* 3. *c.* 79. See Low *v.* Waller, 1 *Fonb. Eq.* 237.

(*a*) It is obſervable, however, upon this ſtatute, that it extends only to agreements made between the *grantor* and the *grantee*, of an office. See Ballamy *v.* Burrow, *Forreſt*, 18. to avoid contracts, therefore made between perſons and *office brokers*, it is neceſſary to have recourſe to a Court of Equity, where a perſon's ſelling his intereſt to procure a perſon an office of truſt or ſervice under government is held to be a contract of turpitude. "It is acting againſt the conſtitution by which the government ought to be ſerved by fit and able perſons, recommended by the proper officers of the Crown for their abilities, and with purity." *Per Henley Cha.* in Morris *v.* M'Cullock, *Amb.* 435. And ſee alſo Parſons *v.* Thompſon 1 *H. Blac. Rep.* 322. Garforth *v.* Hearon, *Ibid.* 327.

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So agreements by a bankrupt or other perſon in his behalf to pay a ſum of money to a creditor for ſigning his certificate, is void by 5 *Geo.* 2. *c.* 30. *ſ.* 11. Smith *v.* Bromley, *Dougl.* 696.

And though the money to be paid under an agreement of this latter kind, be for the benefit of all the creditors, it makes no difference. Aſſignees of Gardner *v.* Berkely, *Dougl.* 685. And ſee Lewis *v.* Chaſe, 1 *P. Wm.* 620.

And ſo contracts for inſuring lottery tickets, by 14 *Geo.* 3. *c.* 76. And 1 *Geo.* 2. *ſt.* 2. *c.* 14, reſpecting ſeamen's wages.

Agreements inducing the omiſſion of duties.

Of contracts being unlawful on account of their object being to induce the omiſſion of ſomething, of which it is the duty of the perſon with whom it is made to perform. See *Hob.* 12. *Moore* 856.

And with reſpect to their being unlawful on the ſcore of encouraging unlawful acts or omiſſions, ſee Reatham *v.* Martin, 2 *Bulſt.* 213. *Fitzh. Abr. Tit. Obligation*, 37. 1 *Lev.* 209. 10 *Rep.* 100, *b.* *Plow.* 60. *Dyer*, 118, 119, 324. *Cro. Car.* 353, 354.

Futile agreements.

And laſtly, if the ſubject of a contract or agreement be ſelf-evidently uſeleſs as tending to no conſequence when put in execution, this will render it void; becauſe, engagements of this kind produce no obligation. Mitchell *v.* Reynolds, 1 *P. Wms.* 192. And ſee *Puff, l.* 5. *c.* 2. *ſ.* 3.

So contracts which tend wantonly to affect the intereſt or feelings of third perſons are void. Da Coſta *v.* Jones, *Cowp.* 729, 735. Atherton *v.* Beard, 2 *Term. Rep.* 610. Good *v.* Elliott, 3 *Ibid.* 697.

But, although agreements reſpecting things which the law prohibits to be the ſubject of ſtipulation, create no right, and conſequently occaſion no obligation on either ſide, yet the law will, in ſome caſes, ſuffer them to prevail after they have been carried into execution. For

CONSIDERATION. which see the cases collected and observed upon, 1 *Pow. Contr.* 201 to 231.

IV. *Of the Consideration necessary to support an Agreement.*

Consideration of an agreement.

A *Consideration* is the material cause or chief support of an agreement; it is that in expectation of which each party is induced to give his assent to what is stipulated, and may be either a *good* consideration, as the consideration of blood, or natural affection; or a *valuable* consideration, as of money, marriage, or the like. 2 *Blac. Com.* 297. It may also be either express or implied; an

Consideration express and implied.

express consideration is, when the motive or inducement of the parties in the contract is distinctly declared by the tenor of the agreement; a consideration is implied when an act is done, or forborne at the request of another, *without* an *express* stipulation, in which case the law *presumes* an adequate compensation for the act or forbearance to have been the inducement of the one party, and the undertaking of the other. 1 *Fonb. Eq.* 345, *n.*

Some consideration necessary to support an agreement.

"A consideration of some sort or other, says Sir *W. Blackstone*, is so absolutely necessary to the forming of a contract, that a *nudum pactum*, or agreement to pay, or do any thing on one side, without any compensation on the other, is actually void in law, and a man cannot be compelled to perform it." 2 *Blac. Com.* 445. And see *Plowd.* 308, *d. Dy.* 336, *b.* And this position will not, perhaps, at law, admit of a single exception, if confined to *verbal* (or rather *oral* agreements) but when applied to agreements in *writing*,* it seems to admit of some quali-

* See Pellans *v.* Mierop, 3 *Bur.* 1670, where Mr. Justice Wilmot, though he said that there was no *radical* defect in a

fication, and to be confined to thoſe caſes where the writing does not, from the ſolemnity of its nature, either in itſelf, import a conſideration, or from its being a *negotiable* ſecurity, the intereſts of third perſons may be involved in its efficacy. CONSIDERATION.

In proceeding upon this intereſting and important branch of the ſubject of Agreements, I ſhall preſent the Student with the ſubſtance of an eloquent and accurate note of Mr. *Fonblanque* to his valuable edition of the "*Treatiſe of Equity.*"

Remarks of Mr. Fonblanque on this point.

"The object of the Legiſlature inpaſſing the ſtatute of 13 *Eliz. c.* 5, againſt fraudulent conveyances, was evidently to protect creditors from thoſe frauds which are frequently practiſed by debtors, under the pretence of diſcharging a moral obligation; for as to thoſe gifts or conveyances which want even a *good* or *meritorious* conſideration for their ſupport, their being *voluntary* ſeems to have been always a ſufficient ground to conclude that they were fraudulent. But though the ſtatute protects the legal rights of creditors againſt the fraud of their debtors, it anxiouſly excepts from ſuch imputation the *bona fide* diſcharge of a *moral duty*, it does not, therefore, declare all *voluntary* conveyances, but all *fraudulent* conveyances, to be void. 1 *Ch. Ca.* 99, 291. 1 *Vent.* 194. 1 *Mod.* 119. 1 *Atk.* 15. *Cowp.* 708. And whether the conveyance be fraudulent or not, is declared to depend on the

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conveyance for want of a conſideration, and that the policy of the civil law in preſcribing certain forms, was merely to guard againſt ſurpriſe, and that an agreement being reduced into writing, was a ſufficient caution againſt ſurpriſe, yet he forbore giving his opinion, whether an agreement when reduced into writing was always good. See Ranor *v.* Hughes, 7 *Durn. Eaſt. Rep.* 350, *n.*

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conſideration being *good* and *bona fide*. A *good* conſideration is that of blood, or of natural love and affection. 2 *Blac. Com.* 297. And a gift made for ſuch conſideration ought certainly to prevail, unleſs it be found to break in upon the legal rights of others; but if it does break in upon ſuch rights, it is equally clear that it ought to be ſet aſide; if, therefore, a man being indebted, convey to the uſe of his wife or children, ſuch conveyances would be within the ſtatute; for though the conſideration be *good*, yet it is not *bona fide*, that is, the circumſtances of grantor render it inconſiſtent with that good faith which is due to his creditors."

An agreement for a valuable conſideration good againſt ſubſequent creditors.

And per Lord *Hardwicke*, if there be a voluntary conveyance of real eſtate, or chattel intereſt, by one not indebted at the time, though he afterward becomes indebted, if that voluntary conveyance was for a child, and no particular evidence or badge of fraud to deceive, or defraud ſubſequent creditors, that will be good; but if any mark of fraud, colluſion, or intent to deceive ſubſequent creditors, appear, that will make it void (*a*).

(*a*) Townſhend *v.* Wyndham, 2 *Vez.* 11. See alſo Stileman *v.* Aſhdown 2 *Atk.* 481. Foe *v.* Ruſhleigh, *Cowp.* 711. Ruſſell *v.* Hammond, 1 *Atk.* 13. The caſe of Jones *v.* Marſh, *Forreſt* 64, and Hungerford *v.* Earl, 2 *Vern.* 261. may, however, be thought to weaken the authority of the diſtinction taken by Lord Hardwicke in Townſhend *v.* Wyndham; Lord Talbot having in Jones *v.* Marſh, declined giving any opinion how far a family ſettlement, without *conſideration*, would be fraudulent againſt *ſubſequent* creditors, though the party was *not indebted* at the time; and *Hutchins*, Lord Commiſſioner, having held ſuch ſettlement to be void. It is obſervable, however, that Lord Talbot was not by the circumſtances of the caſe before him, called upon to give his opi-

This diſtinction is drawn from conſiderations too obvious to require illuſtration from caſes; for if a man *indebted* were allowed to diveſt himſelf of his property in favour of a wife or child, his *creditors would be defrauded*; but if a man *not indebted* could not make an effective ſettlement in favour of ſuch objects, *becauſe, by poſſibility he might afterwards become indebted*, it would deſtroy thoſe family proviſions which are, under certain reſtrictions, a benefit to the public, as well as to the individual objects of them. See Walker *v.* Burrows, 1 *Atk.* 94. It may, however, be material to obſerve, that the grantor being indebted is not the *only* badge of fraud, ſeveral other circumſtances are enumerated in Twyne's caſe, 3 *Co.* 82, as furniſhing a ſtrong preſumption that the tranſaction is *mala fide*. If the conveyance contain a power of revocation, or a power to mortgage, it will be conſidered as fraudulent againſt creditors. Tarback *v.* Marbury, 2 *Vern.* 510, if the grantor be allowed to continue in poſſeſſion, the conveyance being abſolute. Stone *v.* Grubham, 2 *Bulſt.* 218. Or if the conveyance or gift be of the whole or greater part of the grantor's property, ſuch conveyance or gift would be preſumed to be fraudulent, for no man can voluntarily deveſt himſelf of all or the moſt of what he has, without being aware that future creditors will probably ſuffer by it. In ſhort, if the tranſaction be chargeable with any circumſtance ſufficiently ſtrong to raiſe a preſumption of its being a fraud, it cannot be ſupported unleſs ſome *other* conſideration be interpoſed to obviate the objection ariſing from the general nature of the

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nion, and that the opinion of Hutchins, Lord Commiſſioner, was evidently influenced by the proviſions of the ſettlement not having been purſued.

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tranſaction; as where the huſband, after marriage, being indebted, conveyed an eſtate to truſtees to the ſeparate uſe of his wife, it was held, that the truſtees having undertaken to indemnify the huſband againſt the wife's debts, was ſufficient to ſupport the ſettlement, as made for a *valuable* conſideration (*a*). But it is to be obſerved, that though a voluntary contract will in general be void againſt any creditors, yet it will be binding on the *party himſelf*, and alſo all perſons claiming under him as mere *volunteers*. See 1 *Fonb. Eq.* 270, *n.* (*a*).

Agreements muſt be beneficial to one of the parties.

It is further neceſſary that a conſideration, to ſupport an agreement, muſt be either for the benefit of the one party, or to the prejudice of the other; and where the act is to be done by the one party for the benefit of the other, any thing, however trifling, will be a ſufficient conſideration to ſupport the contract and ground an action. Sturley *v.* Albany, *Cro. Eliz.* 67, 150. *Cro. Car.* 70. *Dyer*, 272. *Pl.* 31, note 31.

A conſideration may alſo, as has juſt been ſaid, ariſe by doing or permitting to be done ſomething to the *prejudice* of one of the parties. Hence it appears, that it is not abſolutely neceſſary that the conſideration for a contract imports ſome gain to him that makes the contract; but it is ſufficient that the party in whoſe favour the contract is made forego ſome advantage or benefit which he otherwiſe might have had, or ſuffer ſome

(*a*) Stevens *v.* Olave, 2 *Bro. Rep.* 90. But if this tranſaction had been with a view to defraud creditors, it would probably have been ſet aſide; for, "if the tranſaction be not *bona fide*, the circumſtance of its being, even for a valuable conſideration, will not take it out of the ſtatute." *Per Manſfield*, Cadogan *v.* Kennett, *Cowp.* 434. Stileman *v.* Aſhdown, 2 *Atk.* 477.

loſs in conſequence of placing his confidence in the other's engagements. See 1 *Roll. Ab.* 22. *Pl.* 23. Lane *v.* Malory, *Hob.* 4, 5. Bidwell *v.* Calton, *Ibid*, 216. *Cro. Jac.* 342. *Dyer*, 272. *Pl.* 31. *Cro. Eliz.* 63, 74, 75, 849, 881. Webb's caſe, 4 *Leon.* 110. 3 *Bulſt.* 187. 1 *Roll. Rep.* 381; and 1 *P. Contr.* 344. CONSIDERATION.

It is alſo neceſſary that the conſideration of an agreement ſhould be *legal*, *i. e.* of ſuch a nature as that it may conſiſtently with the preceding rules, induce a legal obligation. If, therefore, the conſideration of an agreement be the doing ſome act which the law prohibits, or be prejudicial to the intereſts of ſociety, or militate againſt the ſound principles of morality, or be offenſive to decency, it will be void. See Martin *v.* Blithman, *Yelv.* 197, *a.* Conſideration muſt be legal.

So if the conſideration be the omiſſion of ſome act or duty which the law enjoins, or which the duties of morality and good conſcience, or the public welfare requires, it will invalidate the agreement.

Conſiderations are moreover either executed or executory; if the motive or inducement be *executed* and paſt, it it is not in general a ſufficient conſideration upon which to ground a ſubſequent agreement. Thus, where one, in conſideration that another *had* built him a houſe, &c. agreed to pay ſo much money, it was held to be no conſideration, becauſe perfectly paſt. See caſes cited, 1 *Pow. Contr.* 348. Conſiderations executed and executory.

Caſes of this deſcription are, however, to be diſtinguiſhed from thoſe where "although ſome part of the conſideration appears to be paſt, yet the whole is but one tranſaction;" as in 2 *Bulſtr.* 73. Peare *v.* Unger, *Cro. Eliz.* 94. *Cro. Car.* 409. Warren *v.* Morſe, *Cro. Eliz.* 138. 3 *Salk.* 96.

So too an agreement founded on a conſideration *exe-*

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cuted is good, if there were a prior duty or moral obligation in the party to do the thing ſtipulated. 2 *Blac. Com.* 445. Hodge *v.* Vavaſor, 1 *Roll. Rep.* 413. Johnſon *v.* Aſtell, 1 *Leo.* 198. 2 *Ib.* 111. Church *v.* Church, cited in Hunt *v.* Wooton, *Sir J. Raymond*, 260. *Cro. Eliz.* 130. Turner *v.* Watſon, *Bul. N. Pri.* 147. Truman *v.* Fenton, *Cowp.* 544. Or if the conſideration was at the defendant's *ſpecial inſtance* and requeſt, for though the promiſe *follows*, yet it is not *naked*, but coupled with the preceding ſuit or requeſt. 3 *Salk.* 96. Lampleigh *v.* Brathwaite, *Heb.* 105. 1 *Bulſtr.* 120. *Dyer* 272. *pl.* 31. *Cro. Car.* 409. *Cro. Eliz.* 42, 252, 482. Boſden *v.* Thyn, *Cro. Jac.* 18. 2 *Vent.* 268. Pillans *v.* Mierop, 3 *Bur.* 1671.

Forbearance of ſuit.

Forbearance of ſuit may alſo be made the conſideration of an agreement, but in order to its effectually ſupporting the contract, two things muſt be attended to: 1ſt, The forbearance muſt either be *general* and abſolute, or elſe for a *particular time certain* and defined, and not for an uncertain, indefinite period. Longhill *v.* Broughton, *Moore* 1167. But forbearance for a *reaſonable* time has been held to be ſufficiently certain to be left to a jury. Lutwitch *v.* Huſſey, *Cro. Eliz.* 19. Philips *v.* Sackford, *Ib.* 455. 2dly, The ſuit to which the forbearance applies, muſt be ſuch as is ſupportable either at law, Hummers *v.* Hawton, *Hard.* 73, or equity, 3 *Salk.* 96, againſt the defendant, or perſon from whom the obligation is ſaid to be due.

The conſideration muſt alſo be valuable, and of moment to the parties, for idle and inſignificant motives are not deemed *conſiderations*. If, therefore, the matter in queſtion be of ſuch a nature, or ſo affected by legal or equitable circumſtances, as that the forbearance can

evidently secure neither any benefit to the promiſer, nor induce any loſs to the promiſee, it will be looked upon as void and ineffectual. See Randall *v.* Harvey, *Godb.* 358. Goodwin *v.* Willoughby, *Hard.* 73. Lee *v.* Newcomb, *Ibid.* Unleſs, indeed, the thing be ſo *colourable* and plauſible as to afford a reaſonable preſumption that the plaintiff's claim be good, in which caſe forbearance will be a good conſideration. *Dyer* 31, 272. *Note.* Woolaſton *v.* Webb, *Hob.* 18. CONSIDERATION.

A contract or agreement may, we have ſeen, be ſupported either by a valuable conſideration, as marriage, work done, &c. or by a good conſideration, as that of "blood or natural affection between near relations, the ſatisfaction accruing from which the law eſteems an equivalent, for whatever benefit may move from one near relation to another." 2 *Blac. Com.* 444. Beard *v.* Nuthall, 1 *Vern.* 427. Conſideration good and valuable.

But various other conſiderations may nevertheleſs, if proceeding on equitable circumſtances, be made the foundation of an agreement, as for ending diſputes in a family. 1 *Atk.* 3. Winman *v.* Roper, 1 *Chan. Rep.* 84; or preventing litigation between ſtrangers, and the like. Conn *v.* Conn, cited 1 *Atk.* 10. Gilmore *v.* Batiſon, 1 *Vern.* 4. 2 *Vent.* 353. Adjuſtment of differences.

It is not in general neceſſary that the conſideration ſhould be expreſſed in the agreement, it being ſufficient if it can be collected out of the circumſtances. 1 *Vern.* 450. See alſo 1 *Leon*, 170. *Moore* 504, 570. *Cro. Ja.* 819. *Pl.* 14. *Dyer* 91 *b. note.* And as it ſeems to be the better opinion that if an expreſs but inſufficient conſideration appear on the face of the agreement, no other can be implied. Bedell's caſe, 7 *Rep.* 40. 2 *P. Wms.* 176. Conſiderations need not be expreſſed in the agreement.

CONSIDERATION. The conſideration of agreements is, in practice, ſeldom inſerted.

But per *Parker, Ch. Juſt.* in Mitchel *v.* Reynolds, 1 *P. Wms.* 292, "it is beſt that a good or ſufficient conſideration, in an agreement for reſtraint of trade, ſhould appear upon the face of the contract, becauſe wherever ſuch contract ſtands indifferent, and for ought that is known may be good or bad, the law *primâ facie* preſumes it to be bad."

AGREEMENTS.

I. Relative to Purchases.

Articles of Agreement for the Sale of an Eſtate by two Jointenants, *to be carried into Execution by a* Decree in Equity. *Part of the Purchaſe Money to be paid to the* Vendor's Banker, *as a Depoſit, and the Remainder into the Bank in the Name of the* Accountant General.

Articles of agreement indented, (*a*) had, made, concluded, and agreed upon this 4th day

(*a*) The difference between the effect of a deed poll, and an indenture, as ſtated in our ancient law authorities is, that the ſtipulations in a deed poll "ſhall be conſtrued to bind only the party expreſly entering into them; but the words of an *indenture* are deemed to be the words of *both* parties; and though purporting to be the words of only *one* of them, yet ſhould the juſtice of the caſe require it, they will be applied

PURCHASES. Parties.

of *November*, in the year of our Lord 1799, (*a*) between *Eliz. Deighton*, of, &c. in the county of, &c. and *William Sleigh*, of, &c. in the county, &c. (*the vendors*) of the firſt part, and *William*

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to the other party alſo, ſo that in an indenture, every word which is doubtful ſhall be applied and expounded to be ſpoken by him to whom it will beſt agree, according to the intent of the parties; and ſhall not, as in a deed poll, be taken more ſtrongly againſt or beneficially for the one than the other." See *Shep. Touch. c.* 4. page 52 and 53. Hence, it is frequent to indent even mere *memoranda* or heads of agreements, though intended to be afterwards more formally executed, and as ſuch preparatory agreements are frequently looſely worded, this ſeems to have been a very proper precaution when the above diſtinction was ſtrictly adhered to, but as a greater latitude has ſince prevailed in the conſtruction of legal inſtruments, and every ſpecies of aſſurance is equally entitled to a beneficial conſtruction, ſo as to effectuate the general intention of all the parties: the continuance of the practice appears to be of little uſe.

(*a*) Though the date of an inſtrument be omitted, or be falſe, it will not be material, ſo that the time of its being executed can be proved, as it takes effect from the *delivery* and not from its date. Anciently, indeed, (*i. e.* till the reign of *Ed.* 2.) it was *unuſual* to inſert the date, owing, probably, to the doctrine which then prevailed, that unleſs the deed was of record it was not pleadable after the date had run beyond the time of memory. See Dodſon *v.* Hayes, *Yelv.* 193. And if two deeds bear date the ſame day, and are manifeſtly but one deed, that ſhall be preſumed to have been firſt executed, which ought to have been ſo, in order to ſupport the intention of the parties. See Taylor *v.* Hordi, 1 *Bur.* 106.

Formerly it was cuſtomary, as we perceive by the ancient charters, to name the place where the execution of the deed

Thomas, of the pariſh of, &c. in the county, of &c. (*a*) (*the purchaſer*) of the other part, as follows; that is to ſay: PURCHASES.

FIRST, The ſaid (*vendors*) have agreed, and do hereby agree, (*b*) to ſell and convey unto and to the uſe of (the *purchaſer*) his heirs and aſſigns, or as he or they ſhall direct or appoint the

The vendors agree to ſell and convey to purchaſer, his heirs and aſſigns.

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took place; but as this made it neceſſary in pleading the deed (*Co. Lit.* 261.) to allege the *actual place* of its execution, (which might be abroad, or in a place remote from the courts of judicature), that practice is now diſuſed, by which means its validity may be tried in any county moſt convenient to the parties.

(*a*) It is obvious that the parties muſt be ſo named and deſcribed in a deed as to diſtinguiſh them from others; but ſo that this be done it is not material by what means; "for though it is beſt and moſt ſafe to deſcribe the perſon by his true and proper name of baptiſm, and alſo by his ſurname, (and if it be a corporation by the true name whereby the corporation is made) yet miſtakes, omiſſions, or inadvertences in this reſpect, unleſs they be very groſs, will not make the grant void." for *nihil facit error nominis cum de corpore conſtat.* See 2 *Roll. Abr.* 43. *Perk.* 36; 39, 41. *Co. Lit.* 3. *Shep. Touch.* 56, 233, 236.

(*b*) Every agreement under hand and ſeal, amounts to a covenant, and will ſupport that ſpecies of action. The word *covenant*, therefore, though frequently inſerted is not neceſſary. See 1 *Co.* 155. 1 *Mod.* 113. 2 *Ib.* 89, 91. And where ſuch agreement is for a valuable and adequate conſideration, it will bind the land. 1 *P. Wms.* 277, and the vendor will be conſidered as a truſtee for the purchaſer, until the conveyance is perfected. 2 *Ch. Ca.* 212.

PURCHASES.

The manor and capital meſſuage of Aſcot.

Clear of all incumbrances.

for 24,200l. whereof 500l. now to be paid into the hands of bankers.

manor (*a*) or lordſhip of *Aſcot* with the rights, members, and appurtenances (*b*) thereof, in the county of *Oxford*, and the capital and other meſſuages, (*c*) cottages, (*d*), farms, (*e*) parks, (*f*) lands, (*g*) tenements, (*h*) and hereditaments, (*i*) ſituated in the ſeveral pariſhes of *Great Milton* and *Newington*, in the ſaid county of *Oxford*, ſet forth in a certain letter of even date herewith, particularly deſcribing the ſame, and ſigned by the ſaid (*vendors*) reſpectively, clear of all manner of incumbrances, for the price or ſum of £24,200, to be paid in manner following; (that is to ſay) the ſum of £500, part thereof to be paid (*k*) by the ſaid (*purchaſer*) at or

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(*a*) See the expoſition of the word *manor*. 4 *Co.* 79, *b.* *Vaugh.* 71. 2 *Ld. Raym.* 884. 3 *Atk.* 82.

(*b*) 4 *Co.* 38, *a.*

(*c*) 3 *Atk.* 82. 1 *Cro.* 41, 346. 3 *Ib.* 15, 113.

(*d*) 2 *Inſt.* 736. *Salk.* 169.

(*e*) 1 *Plow.* 191, *b.* 195, *a.*

(*f*) *Hob.* 44.

(*g*) *Cro. Eliz.* 47, *b.* 1 *Vent.* 260. *Skin.* 539. 1 Elem. Convey. 1.

(*h*) *Mod.* 82. *Moor.* 82.

(*i*) 1 *Co.* 121, *a.* 3 *Ib.* 2, 4, 8. 7 *Ib.* 33. 1 *Inſt.* 6, *a.* 16, *a.* 383, *a.* *Salk.* 349.

(*k*) The law not having appropriated any particular form of words in the conſtituting an agreement, any expreſſions clearly indicating the intention of the party, will operate as

before the ſealing and delivery of theſe preſents into the hands of (*purchaſer's bankers*) in the joint names of himſelf the ſaid (*purchaſer,*) and them the ſaid (*vendors,*) by way of depoſit for the purpoſes hereinafter mentioned, and the ſum of £23,700, the reſidue of the ſaid purchaſe money to be paid by the ſaid (*purchaſer*) his heirs, executors, adminiſtrators, or aſſigns within the time and in the manner hereinafter mentioned.

PURCHASES.

In the name of himſelf and the vendor as a depoſit.

The reſidue to be paid in manner after mentioned.

SECONDLY, It is agreed, by and between the ſaid parties to theſe preſents, that the ſale of the ſaid manor and premiſes, ſhall be carried into execution under a decree of the Court of *Chancery* (*a*) in a ſuit to be commenced for that purpoſe, and that the coſts of obtaining ſuch decree, and the making out a good title to the ſaid premiſes, ſhall be paid out of the ſaid purchaſe money, and that the coſts and charges of the deeds of conveyances of the

The ſale to be carried into execution by a decree in Chancery;

and the coſts thereof, and the making a title to be paid out of the purchaſe money; the coſt of conveying to be paid by the purchaſer.

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effectually to bind him, as if the technical words uſually employed upon ſuch occaſions were uſed. See 1 *Ch. Ca.* 294. 1 *Roll. Ab.* 518. *Ld. Raym.* 189. And whatever amounts to an agreement, it has been already obſerved, will amount to a covenant. Theſe words, therefore, "to be paid," conſtitute a *covenant*. But that technical words are far from being uſeleſs the editor has attempted to ſhow, and he truſts, indiſputably proved, in another place. See *Elem. Conv.* Bk. IV.

(*a*) As to the caſes in which it is proper that the ſale of an eſtate ſhould have the ſanction of this Court, ſee *Elem. Conv.* Bk. III.

PURCHASES.

ſaid premiſes ſhall be paid by the ſaid *(purchaſer)* his heirs or aſſigns. *(a)*

THIRDLY, It is agreed by and between the ſaid parties to theſe preſents, that the ſaid *(purchaſer)*, his heirs, executors, or adminiſtrators, ſhall, and will, on or before the 24th day of *December* next, pay the ſaid ſum of £23,700, the remainder of the ſaid purchaſe money into the bank, in the name, and with the privity of the Accountant General of the Court of *Chancery*, to be placed to the credit of the cauſe to be commenced in the ſaid Court for the purpoſe aforeſaid, and that the ſame ſhall be thereupon laid out and inveſted in the purchaſe of 3 *per cent.* reduced Bank annuities, under an order of the ſaid Court, to be obtained for that purpoſe; and that the ſame ſhall remain ſo laid out and inveſted, until a good title to the ſaid manor and premiſes ſhall be made out, and ſuch decree obtained as aforeſaid; and that the ſaid 3 *per cent.* reduced Bank annuities ſo to be purchaſed with the ſaid ſum of £23,700,

The remaining ſum of 23,700l. to be paid into the bank, in the name of the accountant general, to be placed to the credit of the cauſe to be commenced, and to be laid out in the purchaſe of ſtock,

and to remain till a good title ſhall be made and decree obtained.

(a) Where the conveyance of an eſtate is to be made at the coſts of the purchaſer, and no particular aſſurance is ſpecified, the covenantor, it is ſaid, may make any valid aſſurance that he chooſes, but muſt give previous notice to the purchaſer what it will be, that he may know what money to tender, without which the covenant will be void. See *Cro. Eliz.* 517. *Pl.* 42. *Moor.* 236, 454. 5 *Co.* 22, *b. and Poſt.* 57. *n.* (*a*).

and the dividends and proceeds which ſhall have accrued or become due thereon, together alſo with the ſaid ſum of £500 ſo to be paid into the hands of the ſaid (*bankers*) aforeſaid, ſhall thereupon be transferred, paid, applied, and diſpoſed of in ſuch manner as the Court of *Chancery* ſhall order or direct (*a*), and that upon ſuch payment of the ſaid ſum of £23,700 into the Bank by the ſaid (*purchaſer*), his heirs, executors, or adminiſtrators, on or before the ſaid 24th day of *December* next, the ſaid (*purchaſer*) his heirs and aſſigns, ſhall be let into the poſſeſſion of the ſaid premiſes, and the receipt of the rents and profits thereof from *Midſummer Day* now laſt paſt; but in caſe the ſaid (*purchaſer*) his heirs or aſſigns ſhall not, on or before the ſaid 24th day of *December* next, pay the ſaid ſum of £23,700 into the *Bank* to be placed to the credit of the ſaid cauſe, and inveſted in the manner aforeſaid, then the ſaid ſum of £500 ſo to be paid by him the ſaid (*purchaſer*), into the hands of the ſaid (*bankers*), by way of depoſit as aforeſaid, ſhall be forfeited, and paid over by the ſaid (*bankers*) to the ſaid (*vendors*) or the ſur-

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The intereſt accruing from the ſaid ſums of 23,700l. and 500l. to be transferred and diſpoſed of as the Court of Chancery ſhall direct; and upon payment of the ſaid ſum of 23,700l. into the bank the ſaid purchaſer to be let into poſſeſſion; but in default thereof,

the ſaid ſum of 500l.

ſhall be forfeited and paid to the vendors,

(*a*) As to the caſes in which the Court of Chancery has refuſed to decree the payment of money by a purchaſer purſuant to his articles for a purchaſe, ſee 2 *P. Wms.* 220.

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vivor of them, or the executors, adminiſtrators, or aſſigns of ſuch ſurvivor, for their, her, or his own uſe and benefit (*a*), as a recompence and ſatisfaction for their trouble, and the coſts and charges which they ſhall have been put unto relating to the preſent agreement, and the execution thereof on their parts; and that thereupon they the ſaid (*ven-*

(*a*) In all contracts of an *executory* nature, *i. e.* where ſomething further is to be done hereafter to *perfect* the agreement, it is proper to introduce ſome kind of proviſional or collateral ſafeguard againſt a poſſibility of failure in either of the parties to perform his ſtipulations. This may be done either by ſtipulating, that the party failing ſhall pay to the other all *actual* damages which the other ſhall ſuſtain through ſuch default, or by ſtipulating the payment of a ſpecific ſum, either as a penalty *in terrorem*, or elſe as liquidated or acknowledged damages.

Where the ſum is intended merely *in terrorem*, to ſecure the enjoyment of a collateral object, the enjoyment of the object is conſidered as the principal intent of the parties, and the penalty only acceſſorial, and, therefore, only to ſecure the damage actually incurred. Per. *Ld. Thurlow*, *Ch.* in Sloman *v.* Walter, 1 *Brow. Ch. Rep.* 418. And ſee Davy *v.* Barber, 2 *Atk.* 488. White *v.* Nutt, 1 *P. Wms.* 61, upon which principle equity will interpoſe to reſtrain any proceedings which may have been commenced at law for the recovery of the penalty, provided the party covenanting be ready to perform the agreement ſpecifically. See Hobſon *v.* Trevor, 2 *P. Wms.* 191. Where, however, the ſum to be paid on the non-performance of the thing ſtipulated is in the nature of *liquidated damages*, the Court will, in *general*, refuſe to interfere. Ray *v.* Bolton, 2 *Atk.* 190. Small *v.* Fitzwilliam, *Prec. Ch.* 102. See, however, Saville and Saville, 1 *P. Wms.* 745. Benſon *v.* Gibſon, 3 *Atk.* 395. Woodward *v.* Giles, 2 *Vern.* 119. See alſo ante, p. 27.

dors) and the ſurvivor of them, and the heirs and aſſigns of ſuch ſurvivor ſhall have full and free liberty, power, and authority, to ſell and convey the ſaid premiſes to any other perſon or perſons whomſoever, or otherwiſe to diſpoſe of the ſame in ſuch manner as they, ſhe, or he ſhall think proper, and as if theſe preſents had never been made or executed.

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who ſhall have full power to re-ſell the premiſes.

And, laſtly, it is agreed, that it ſhall be lawful for *Alice Dormer*, widow to *John Dormer*, Eſq. to retain the poſſeſſion of, and enjoy for the term of her natural life, ſo much and ſuch parts of the ſaid capital meſſuage or tenement, lands, and premiſes hereby agreed to be conveyed as aforeſaid, as are now in her lawful occupation, at, under, and upon the ſame yearly rent, term, and conditions, as ſhe now pays for and holds the ſame. In witneſs, &c. (*a*)

A relation of the vendor to hold for life a part of the premiſes.

We approve of this draft of agreement, and

(*a*) The deed will be good though the foot of the deed be omitted; and though no mention be made of its being ſealed and delivered, ſo that it actually be ſo ſealed and delivered, and the ſealing and delivery can be proved.

As to the neceſſity of ſealing and delivery of deeds; what ſhall be deemed a good delivery, &c. this belongs more properly to the conſtruction of deeds when perfected. Of which ſee *Elem. Convey.* Bk. IV. The ſtudent may alſo collect the law upon this ſubject from 2 *Blac. Com.* 306. *Shep. Touch.* 56. *Mod. Form. Angl.* 26. 1 *Inſt.* 7. 1 *Leon.* 140. *Cow.* 95. Grendit *v.* Baker, *Yelv.* 7. Wyndham's Caſe, *Cro. Eliz.* 520, 835, 884. 2 *Co.* 4, *b.*

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promiſe to execute two parts thereof when engroſſed (a).

Signed by (the *Vendors* and *Purchaſer.*)

Articles of Agreement for the Sale of an Eſtate, between two Vendors *and their* Wives, *and an* Attorney *(b) on Behalf of the* Purchaſer.

Articles of agreement indented, had, made, concluded, and fully agreed upon this ——— day of ——— in the year of our Lord ——— Between *I. B.* of &c. in the county of, &c.

Some doubts have been entertained whether, when the deed is ſealed and delivered, it be neceſſary that it ſhould alſo be *ſigned*, ſee 2 *Blac. Com.* 306; but whether *neceſſary* or not, it is certainly *proper* that the parties ſhould *ſign* as well as ſeal the deed, as it will greatly facilitate the proof of the execution in caſe of their deceaſe.

(a) If there be reaſon to fear that either of the parties may withdraw his conſent to the terms of the agreement before it can be engroſſed; or if the formal execution of the engroſſment by all the parties, is likely to be delayed by reaſon of the remote reſidence of either of them, it will be proper to procure the ſignatures of ſo many of the parties as can be procured.

(b) An attorney properly appointed, may enter into an agreement on behalf of his principal, and will not be perſonally liable in caſe of non-performance. See Johnſon v. Ogilvy, 3 *P. Wms.* 277. But in order to prevent his being

Esq. and *E. B.* his wife, and *W. C.* of, &c. in the county of, &c. Esq. and *S.* his wife, (the *vendors*) of the one part, and *I. S.* of, &c. in the county of, &c. Esq. (the *Attorney*) for and on behalf of *W. P.* of, &c. Esq. (*the purchaser,*) of the other part. PURCHASES.

Several covenants from the vendors for themselves and wives with the attorney.

First, It is covenanted, declared, and agreed, by and between the said parties to these presents, and the said (*first named vendor*), for himself, and *E. D.* his wife, and the said (*second named vendor*), for himself, and *S.* his wife, and for their several and respective heirs, executors, and administrators, do hereby covenant, promise, and agree, to and with the said (*agent of purchaser*), his heirs and assigns, by these presents, that for and in consideration (*a*) of the sum of £55, of good and lawful money of Great Britain, to the said (*vendors*), in hand, well and truly paid by the said (*purchaser's agent*), for and on behalf of the said (*purchaser*), at, or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; and of the further sum of £1045. of like lawful money to be paid to the said (*vendors*) at the time hereinafter expressed, they the said (*first named vendor*) and *E. D.* his wife, and (*second named ven-*

In consideration of a part of the purchase money now paid.

and a part to be hereafter paid.

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personally bound by such stipulations, he must be careful to confine himself strictly within the limits of the authority delegated to him. See Goodwin *v.* Gibbons, 4 *Bur.* 2108. Stone *v.* Cartwright, 6 *Durn.* and *East. Rep.* 411. And see ante, p. 24.

(*a*) See ante, p. 41.

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dor,) and *S.* his wife, and all other neceſſary parties, ſhall and will, on or before the 25th day of *March* next enſuing the date hereof, (*a*) at the coſt and charges of the ſaid (*purchaſer,*) his heirs or aſſigns, (except the coſts and charges of a fine and recovery, or either of them, which ſhall be defrayed by the ſaid (*vendors,*) or one of them) by ſuch good and ſufficient conveyances and aſſurances in the law, as the counſel of the ſaid (*purchaſer*) or his heirs, ſhall adviſe, grant, and convey to the ſaid (*purchaſer*) and his heirs, or to ſuch other perſon or perſons, and his, her, and their heirs, as he, the ſaid (*purchaſer*) or his heirs, ſhall direct, free from incumbrances, ALL thoſe three pieces or parcels of land or ground adjoining to each other, with part of a large barn and appurtenances thereto belonging, ſituate, lying, and being cloſe to the turnpike road in the Caſtle Foregate, being one of the ſuburbs of the town of *S.* in the ſaid county of *S.* and now or late in the tenure or poſſeſſion of *O. S.* his undertenants, or aſſigns, under the yearly rent of twenty pounds, *and alſo* all thoſe two pieces or parcels of land or ground adjoining each other, with the garden, and all other parts of the ſaid barn and appurtenances thereto belonging, ſituate, lying, and being in the Caſtle Foregate aforeſaid, now or late in the tenure or poſſeſſion of *S. S.*

To convey to the purchaſer

the parcels.

(*a*) See the conſtruction of clauſes ſtipulating the performance of an agreement on a given day. Ante p. 3. n. (a) and 27.

coach-maker, his under tenants or aſſigns, at, and under the yearly rent of ten pounds ten ſhillings; and all thoſe two other pieces or parcels of land or ground adjoining each other, with the appurtenances thereto belonging, ſituate, lying, and being in the Caſtle Foregate aforeſaid, now or late in the tenure or poſſeſſion of *T. G. A.* his undertenants or aſſigns, at, and under the yearly rent of twelve pounds twelve ſhillings, all and ſingular which ſaid pieces or parcels of land hereinbefore deſcribed, contain by admeaſurement eight acres one rood and ſeven perches, or thereabouts, be the ſame more or leſs; together with all and ſingular the rights, members, privileges, and appurtenances whatſoever, to the ſame belonging or in anywiſe appertaining. And the ſaid (*vendors*) hereby engage and promiſe for themſelves and their heirs, that they, or ſome one of them, will, at their coſts and charges, or the coſts and charges of ſome one of them, make out, or cauſe to be made out, an abſtract of their title to the aforeſaid premiſes; and that the ſame ſhall be ready to be delivered to the ſaid (*purchaſer*) within the ſpace of three months hence next enſuing; and the ſaid (*purchaſer's attorney*) in conſideration of the premiſes, doth, for and on behalf of the ſaid (*purchaſer,*) his heirs, executors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid (*vendors*) their heirs, and aſſigns, by theſe preſents, that he

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Vendors engage to deliver an abſtract by a given time.

Purchaſer's attorney on behalf of the purchaſer,

engages to pay the remainder of the purchaſe money.

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the ſaid (*purchaſer*) ſhall, and will, on the ſaid 25th day of March now next enſuing; and upon the making and executing ſuch good and ſufficient conveyances and aſſurances as aforeſaid, well and truly pay, or cauſe to be paid unto the ſaid (*vendors*), their executors, adminiſtrators, or aſſigns, or ſuch other perſon or perſons as ſhall be by them properly authoriſed to receive the ſame, the ſaid further ſum of £1045. which, with the ſaid ſum of £55. paid at the ſealing and delivery of theſe preſents, ſhall be in full for the abſolute purchaſe of the freehold and inheritance of the ſaid premiſes. In witneſs, &c.

An Agreement for the Purchaſe of Freehold *and* Copyhold *Meſſuages, &c. from* two Vendors; *part of the Purchaſe Money to be now paid, and the reſt upon a good Title being made. In default of a Title the Premiſes to be a Security for the Money now paid.*

ARTICLES of agreement indented, made, entered into, and concluded, this 16th day of July 1800, between *James Smith*, of, &c. Eſq. and *John Ward*, of, &c. Gent. (*the vendors*), of the *one* part, and *Swan Johnſon*, of, &c. Eſq. (*the purchaſer*,) of the *other* part, as follows; that is to ſay, That the ſaid (*vendors*), in conſideration of the covenant

and agreement hereinafter contained, on the part and behalf of the ſaid (*purchaſer*) to be performed, do hereby for themſelves ſeverally and reſpectively, and for their ſeveral and reſpective heirs, executors, and adminiſtrators, covenant, grant, declare, and agree to and with the ſaid (*purchaſer*), his heirs, executors, adminiſtrators, and aſſigns, in manner following; (that is to ſay,) that they the ſaid (*vendors,*) or one of them, or their heirs, or the heirs of one of them, ſhall, and will, on or before the 29th day of September next enſuing the date hereof, make out and deduce to the reaſonable ſatisfaction of the ſaid (*purchaſer*), his heirs or aſſigns, or his or their counſel in the law, a good and marketable title in themſelves, or in one of them, and effectually convey and aſſure, by ſuch good and ſufficient conveyances and aſſurances in the law, as he the ſaid (*purchaſer*), his heirs, or aſſigns, or his or their counſel, ſhall reaſonably adviſe and approve (*a*) unto and to the uſe of the ſaid (*purchaſer,*) his heirs and aſſigns, or to ſuch perſon or perſons as he or they ſhall in that behalf no-

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The vendors covenant to convey

(*a*) If a man covenant to make ſuch reaſonable aſſurances as the counſel of the purchaſer ſhall adviſe, he muſt ſubmit to all covenants, &c. which are uſual under the particular circumſtances by which the contract may happen to be governed. See *Hob.* 275. But he is not compellable to ſign a warranty. See 1 *Mod.* 67. With reſpect to the mode in which the legal intent of this covenant is to be performed by each of the parties, ſee *Lil. Prac. Conv.* 74. *Elem. Conv. Bk.* iv.

PURCHASES. minate and appoint ALL that the manor or lordſhip of Harſton, with its rights, royalties, and appurtenances, in the ſaid county of Cambridge, and all that capital meſſuage with the appurtenances in Harſton aforeſaid; and all meſſuages, houſes, gardens, lands, meadows, paſtures, woods, hereditaments, and appurtenances whatſoever to the ſaid manor or capital meſſuage, or either of them, belonging, or therewith uſed or reputed as part or parcel, or member of them, or either of them, and all thoſe the demeſne lands of the ſame manor, and all the rents of aſſize, and other rents and hereditaments due or payable within the ſaid manor, and all thoſe coppices and underwoods in Harſton aforeſaid, called the Barnes and Oakmans, and all other the meſſuages, lands, and hereditaments whatſoever, of them the ſaid (*vendors*) or either of them, or of any other perſon or perſons in truſt for them, or either of them, in or near Harſton aforeſaid, in the ſaid county of Cambridge, with their appurtenances; and that free and clear of all manner of legal and equitable charges and incumbrances whatſoever; and further, that he, the ſaid (*purchaſer*) ſhall, and may forthwith enter into and upon the ſaid premiſes, and receive, take, and enjoy to his own uſe, all the rents, iſſues, and profits thereof which are now due, or which ſhall grow due, or be payable for the ſame from *Lady-day* laſt paſt; and alſo all fines

to the vendee.

The parcels.

And that the purchaſer ſhall receive the rents, fines, &c. from the laſt quarter.

which ſhall be demandable for the renewal of leaſes of the premiſes, or any part thereof; and alſo what ſhall be payable for admittances to any copyhold hereditaments holden of the ſaid manor, which ſince Lady-day now laſt paſt have dropped or fallen in or become due or payable, or which ſhall drop or fall in, or become due or payable by the death of any perſon or perſons for whoſe life or lives ſuch leaſes or copyhold eſtates are, or were holden, or otherwiſe, in reſpect of the premiſes, or any part thereof. And the ſaid (*purchaſer,*) in conſideration of the premiſes, and of the covenants and agreements hereinbefore contained on the part and behalf of the ſaid (*vendors,*) doth hereby for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, and agree to and with the ſaid (*vendors,*) their heirs, executors, adminiſtrators, and aſſigns; that he the ſaid (*purchaſer,*) his heirs, executors, or adminiſtrators, ſhall, and will, well and truly pay, or cauſe to be paid unto the ſaid (*vendors,*) or one of them, their, or one of their heirs, executors, or adminiſtrators, as, and for the full and abſolute purchaſe of the ſaid manor, capital and other meſſuages, lands, hereditaments, and premiſes, the ſum of £8,000. of lawful money of Great Britain, in the proportions and manner following; (that is to ſay) £1,000, part thereof at the time of executing theſe preſents, and which he the ſaid (*purchaſer*) hath

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The purchaſer covenants to pay the purchaſe money.

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Part now

and the reſidue on a good title being made.

Agreement that if a good title cannot be made

The premiſes ſhall be a ſecurity for the money now paid,

accordingly now already paid, the receipt whereof they the ſaid (*vendors*) do hereby acknowledge, and therefrom, and from every part thereof do acquit, releaſe, and diſcharge the ſaid (*purchaſer*,) his heirs, executors, and adminiſtrators, for ever by theſe preſents, (*a*) and the further ſum of £7,000, reſidue of the ſaid ſum of £ 8,000, at the time of making and executing ſuch conveyances and aſſurances as aforeſaid. And it is hereby further declared and agreed by and between the ſaid parties to theſe preſents, and the ſaid (*vendors*) do hereby expreſly declare and agree, that in caſe they cannot make out a good title to, and execute and perfect ſuch conveyance and aſſurances of the ſaid manor, hereditaments, and premiſes as aforeſaid, on or before the 10th day of October now next enſuing, then, and in ſuch caſe the ſame manor, meſſuages, hereditaments, and premiſes, and every part thereof ſhall remain and be as a ſecurity to the ſaid (*purchaſer*) for ſecuring to him, his heirs, executors, and adminiſtrators, the ready payment of the ſaid ſum of £1,000 ſo now by him paid as aforeſaid, at, or upon the ſaid 10th day of

(*a*) Notwithſtanding this expreſs acknowledgment of the payment of the conſideration money, yet if the validity of the deed be queſtioned on the ground of fraud, further evidence of the payment muſt be given. Hence it is uſual to indorſe a ſeparate receipt on the back of the deed. 1 *Leon*, 130. *Moor*, 304. 1 *Lev.* 308.

October, together with intereſt for the ſame, after the rate of £5. *per cent. per ann.* from the day of the date hereof until payment thereof; which ſaid ſum of £1000. they the ſaid (*vendors*) do hereby for themſelves, ſeverally and reſpectively, and for their ſeveral and reſpective heirs, executors, and adminiſtrators, engage, promiſe, and agree to pay accordingly; and then alſo and in ſuch caſe, the ſaid (*purchaſer*) doth hereby declare and agree, that all ſuch rents, profits, fines, and monies as ſhall have been by him, his heirs, executors, or adminiſtrators, received from or out of the ſaid manor, hereditaments, and premiſes as aforeſaid, ſhall be deemed and allowed in part of payment of the ſaid ſum of £1,000, with intereſt after the rate aforeſaid. In witneſs, &c.

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which the vendors covenant to pay. In ſuch caſe the rents, &c. received by the purchaſer to go in part of payment.

An Agreement between a Vendor and an Attorney *on Behalf of the* Purchaſer *for the Purchaſe of an Eſtate ſold by* Auction *under a* Decree *of the Court of* Chancery, *and ſubject to a* Mortgage, *and other incumbrances.*

ARTICLES of agreement, indented, &c. between *John Gray*, of &c. Gent. the (*vendor*), of the one part, and *Samuel Davies*, of &c. Eſq. (*purchaſer's attorney,*) for and on behalf of *James*

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Barrow of, &c. (*purchaſer*) of the other part, in manner following: (that is to ſay;)

Recital of the vendor's title.

Whereas (*a*) the ſaid (*vendor*) is ſeiſed of, or entitled to the freehold and inheritance in fee ſimple, of and in the meſſuages, lands, and hereditaments hereinafter mentioned, ſituate and being in the ſeveral pariſhes, of &c. ſubject to a mortgage in fee made thereof by him the ſaid (*vendor*) to *C. S.* of, &c. in the county of *Herts*, by indentures of leaſe and releaſe, bearing date reſpectively the 1ſt and 2d days of January, which was in the year 1798, for ſecuring to the ſaid *C. S.* his executors, adminiſtrators, and aſſigns, the payment of the principal ſum of £800, and intereſt, and alſo ſubject to the payment of ſeveral ſums of mo-

(*a*) The recitals in a deed are uſed to explain the nature and views of the parties in the propoſed conveyance, and, therefore, frequently ſerve to indicate the conſtruction which ought to be put upon the different parts of the inſtrument; and where the ſubject of the deed is the transfer of property, a part of the recital is uſually employed in deducing the title of the grantor to that which he aſſumes the power of making over to the grantee; and this has, in many caſes, proved of incalculable advantage in preſerving the evidence of the title. See Ford *v.* Grey, 1 *Mod.* 44.

They are not, however, any material part of the deed (unleſs in ſome caſes of Grants, by the king, 1 *Co.* 45. *Dy.* 77.), nor have in general any peculiar operation. *Finch. Law*, 33. 3 *Ch. Ca.* 101. *Co. Lit.* 352, *b.* But in ſome caſes, a covenant has been held to lie upon a recital, as amounting to an agreement. See Graves *v.* White, 2 *Eq. Ca. Abr.* 652. 1 *Leon* 1. 122. 2 *Fren.* 57.

ney ſecured by judgment, entered upon, and againſt him the ſaid (*vendor,*) at the ſuits of various perſons, amounting in the whole to the ſum of £2,000 or thereabouts. And whereas by a decree, or decretal order of the High Court of Chancery, made the 25th day of May in the year 1799, in a certain cauſe then depending in the ſaid Court, wherein the ſaid (*mortgagee*) was plaintiff, and the ſaid (*vendor*) and others, were the defendants; it was ordered, (amongſt other things) that what ſhould be found due to the plaintiff for the principal, intereſt, and coſts, (together with what ſhould be paid by him to the defendants in the ſaid cauſe for their coſts,) after deducting out of the ſaid intereſt, ſuch ſums as the ſaid plaintiff had received from the ſaid defendants by rents and profits of the ſaid eſtates and premiſes as in the ſaid order mentioned, ſhould be raiſed by the ſale of the premiſes compriſed in the ſaid indentures of mortgage, or of a ſufficient part thereof; and that ſuch ſale ſhould be made with the approbation of one of the Maſters of the ſaid Court, to the beſt purchaſer that could be gotten for the ſame, and to be allowed of by the ſaid Maſter. And whereas by another order of the ſaid Court made in the ſaid cauſe, on or about the 25th day of May now laſt paſt, it was ordered, that the ſaid eſtates ſhould be ſold by public auction to be made thereof at *Baſington,* in the ſaid County

Recital of orders of Chancery directing ſale of the eſtate.

PURCHASES.

of *Cambridge*. And whereas the ſaid eſtates and premiſes were accordingly put up to ſale by auction, at the place named in the ſaid in part recited indenture, on this ——day of —— inſtant. And whereas the ſaid (*purchaſer's attorney*) for and on behalf of the ſaid (*purchaſer,*) (*a*) hath bidden the ſum of £900 for the abſolute purchaſe of the freehold and inheritance in fee ſimple in poſſeſſion of the ſaid premiſes, as the ſame are ſet forth in a particular thereof, this day produced and ſigned by the ſaid (*vendor*) with the appurtenances thereto belonging, free from all incumbrances, except ſuch as in the ſaid particular are mentioned, which ſaid ſum of £900 is the moſt money that has been bidden, or that can be reaſonably obtained for the purchaſe of ſaid premiſes, and the ſaid (*purchaſer's attorney*) has been, and is accordingly declared to be the purchaſer thereof, on behalf of the ſaid (*purchaſer,*) at the ſaid ſum of £900. And it hath been agreed upon, by and between the ſaid (*vendor,*) and ſaid (*purchaſer's attorney,*) for and on the behalf of ſaid (*purchaſer,*) that the ſaid ſum of £900 ſhall be paid purſuant to the terms of ſaid in part recited decree. Now in conſideration of the ſum of £800 ſo agreed to be paid by the ſaid (*purchaſer*) into the bank, in the name, and with the privity, of the accountant-general, of ſaid Court of Chan-

Recital, that purchaſer's attorney, was the beſt bidder on the behalf of the purchaſer.

(*a*) See ante, 52 note.

cery, to be placed to the credit of the aforeſaid cauſe, as in the ſaid in part recited decree is directed, the ſaid (*vendor,*) for himſelf, his heirs, executors, and adminiſtrators, doth covenant promiſe, declare, and agree, to and with the ſaid (*purchaſer's attorney,*) his heirs, executors, and adminiſtrators, and alſo to and with ſaid (*purchaſer,*) (*a*) his heirs and aſſigns, by theſe preſents, in manner following, (that is to ſay) That he ſaid (*vendor,*) or his heirs, ſhall and will within the ſpace of ſix months next enſuing the date of theſe preſents, (*b*) to the ſatisfaction and approbation of the ſaid (*purchaſer,*) his heirs, or aſſigns, or his or their counſel in the law, make out a clear and good title to the freehold and inheritance in fee ſimple, of and in the ſaid meſſuages, hereditaments, and premiſes ſo herein before mentioned to have been ſold as aforeſaid, and by good and ſufficient conveyances and aſſurances in the law, to be executed by all neceſſary and proper parties, well and ſufficiently convey and aſſure, ALL and ſingular the aforeſaid meſſuages, hereditaments, and premiſes, with all and ſingular the appurtenances to the ſame belonging, unto and to the uſe of the ſaid (*purchaſer*) his heirs and aſſigns, or as he or they ſhall direct and appoint, freed and ab-

PURCHASES.

Covenant from vendor that he will, within a given time, make a good title & convey to the purchaſer.

(*a*) As to covenanting with perſons not parties to a deed, ſee Carth. 76. 2 Inſt. 673. 3 Lev. 139. Cro. Eliz. 56.

(*b*) See ante, p. 50. n. (*a*). and p. 3. n. (*a*).

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free from incumbrances (except those mentioned in the particular.)

On payment of the purchase money the purchaser to be let into poſſeſſion.

Covenant from purchaſer for payment of purchaſe money.

ſolutely diſcharged of and from all charges and incumbrances whatever, ſave only and except ſuch as are particularly mentioned and ſet forth in the ſaid particulars thereof; and further, that upon ſuch payment of ſaid ſum of £800 being ſo made into the bank as aforeſaid, the ſaid (*purchaſer,*) his heirs or aſſigns, ſhall be let into the actual poſſeſſion of the ſaid meſſuages, hereditaments, and premiſes, and into the receipt of the rents, iſſues, and profits thereof, from ſuch time as the ſaid Court of *Chancery* ſhall in that behalf direct. AND in conſideration of the aforeſaid covenant and agreement, on the part of the ſaid (*vendor,*) herein before contained, the ſaid (*purchaſer's attorney,*) for and on behalf of the ſaid (*purchaſer,*) his heirs and aſſigns, doth covenant, promiſe, and agree, to and with the ſaid (*vendor,*) his heirs, executors, adminiſtrators, and aſſigns, by theſe preſents, that upon the preſent covenant or agreement being approved by the ſaid Court of *Chancery*, and upon the title to the ſaid hereditaments and premiſes, being approved by the counſel of the ſaid (*purchaſer,*) he the ſaid (*purchaſer,*) his heirs or aſſigns, ſhall and will pay, or cauſe to be paid, into the Bank of *England*, in the name and with the privity of the accountant-general of the ſaid court, to be placed to the credit of the ſaid cauſe, the ſaid ſum of £800 of lawful money of Great Britain, to be applied and diſpoſed of purſuant to the ſaid decree, and ſubject to h further

order of the ſaid court. AND it is hereby further agreed, by and between the ſaid parties to theſe preſents, that an application ſhall be forthwith made to the ſaid Court of *Chancery*, on behalf of the ſaid (*purchaſer*,) and that the ſame ſhall and hereby is conſented to by the ſaid (*vendor*,) for the purpoſe of carrying this agreement into execution, under the ſanction of the ſaid court; and it is further agreed, that the coſts and charges of deducing and making out the title to the ſaid hereditaments, and premiſes, ſhall be paid out of the ſaid purchaſe money, or otherwiſe borne by the ſaid (*vendor*,) and that the coſts and charges of preparing, engroſſing, and preſenting the deeds of conveyance of the ſaid hereditaments and premiſes, or otherwiſe in taking the ſaid title, ſhall be paid and borne by the ſaid (*purchaſer*,) his heirs or aſſigns, if the ſaid court ſhall conſent thereto. In witneſs, &c.

PURCHASES.

Application to be made to the court for carrying the agreement into execution.

Title to be deduced at the expence of the vendor, and to be conveyed at the expence of the purchaſer.

Articles for the Purchaſe of Lands, at ſo many Years Purchaſe; with ſpecial Agreements relative to Timber.

ARTICLES of agreement indented, made, and concluded upon, this 25th day of *May* 1799, be-

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tween *John James*, of &c. Esq. (*the vendor*,) of the one part, and *William Williams*, of &c. Esq. (*the vendee*,) of the other part, as follows, that is to say, it is hereby agreed, by and between the said (*vendor and vendee*,) for themselves severally and respectively, and their several and respective heirs, executors, and administrators, that he the said (*vendor*,) or his heirs, shall and will sell and convey unto the said (*purchaser*,) his heirs or assigns, on or before the —— day of —— next ensuing the date hereof, all the manor, lands, tenements, and hereditaments, of him the said (*vendor*,) situated at *Ilford*, in the county of *Essex*, &c. and the said (*purchaser*) doth agree to accept the same upon the terms hereinafter mentioned, that is to say, that the said (*purchaser*,) his heirs or assigns, shall pay to the said (*vendor*,) his executors, administrators, or assigns, for the purchase of the said lands, tenements, hereditaments, and premises, after the rate of 30 years purchase, according to the annual rental at which the same now are and is letten to the several tenants and occupiers thereof respectively; and also the like rate of 30 years purchase for all the coppice ground and woodlands belonging to the said premises, (and not letten to the said tenants,) computing the annual value of such coppice, ground, and woodlands, after the rate of 16s. per acre, exclusively of timber growing thereupon. And further that the said

Agreement of the purchase.

So many years purchase,

Timber to be valued.

(*purchaſer*) ſhall pay to the ſaid (*vendor*) for all the timber growing upon the whole or any part of the ſaid eſtate, ſuch ſum of money as the ſame ſhall be valued at by two indifferent perſons, to be choſen the one by the ſaid (*vendor,*) and the other by the ſaid (*purchaſer*;) in which valuation of timber it is agreed that all trees which ſhall be of the value of 40s. or upwards, ſhall be accounted timber. And for and in conſideration of the premiſes, and of the ſaid purchaſe money, the ſaid (*vendor,*) or his heirs, ſhall convey, or procure to be conveyed to the ſaid (*purchaſer,*) his heirs and aſſigns, a good eſtate in fee ſimple, in all the aforeſaid manors, hereditaments, and premiſes, including all the foreſt ground, fiſh ponds, manors, royalties, free chaſe, and free warren, privileges and perquiſites, belonging to the ſaid (*vendor*;) and alſo including the perpetual advowſon of the church or parſonage of *Ilford*, and all other the eſtate, right, title, and intereſt, which the ſaid (*vendor*) hath in the ſaid manor lands, hereditaments, and premiſes, or any other lands, hereditaments, and premiſes, in *Eſſex* aforeſaid, and that free and clear of and from all manner of incumbrances whatſoever, unleſs the ſaid *purchaſer*) ſhall elect and chooſe to pay off the mortgages, and other incumbrances, if any, which now are upon the ſaid eſtate and premiſes, out of the ſaid purchaſe money, in which caſe he ſhall be allowed

PURCHASES.

What trees to be deemed timber.

The vendor to convey a good title.

The purchaſer to retain money to pay off incumbrances.

PURCHASES.

to retain in his hands ſo much of the ſaid purchaſe money as ſhall be ſufficient for that purpoſe.

The valuation of timber to be poſtponed till winter, and the purchaſer to give bond for the money.

And further that, as it may be difficult (if not impracticable,) rightly to view and value the timber growing upon the ſaid eſtate and premiſes, and to meaſure the coppice ground and wood-lands being thereupon, during the ſummer ſeaſon, by reaſon whereof the purchaſe money to be paid by the ſaid (*purchaſer,*) in reſpect of ſuch timber and coppice ground cannot at preſent be reduced to a certainty, it is agreed that the valuing of the ſaid timber, and meaſuring the ſaid coppice ground, ſhall be deferred until the next enſuing autumn, or fall of the leaf, and that in the mean time the ſaid (*purchaſer*) ſhall give to the ſaid (*vendor,*) or to ſome other perſon whom he ſhall name in truſt for him, a bond in a ſufficient penalty, conditioned for payment of the ſum at which the ſaid timber and coppice ground ſhall be valued as aforeſaid, immediately after ſuch valuation ſhall be completed. In witneſs, &c.

Articles

Agreement as to Money retained in Conſequence of Doubts ariſing reſpecting the validity of a Title for want of a Confirmation of an Advowſon, by the Heir at Law of a former Owner.

Articles of Agreement made &c. between W. H. of &c. of the one part, and N. D. of &c. of the other part.

WHEREAS by articles of agreement bearing date the — day of —— laſt, and made between the ſaid *W. H.* of the one part, and the ſaid *N. D.* of the other part, in conſideration of the ſum of £5000 then paid to the ſaid *W. H.* by the ſaid N. *D.* and of the further ſum of £20,000 to be paid to the ſaid *W. H.* by the ſaid *N. D.* as thereinafter is mentioned, he the ſaid *W. H.* covenanted and agreed that he, his heirs or aſſigns, would, on or before the 29th day of *September* then next, and now laſt paſt, by good and ſufficient conveyances or aſſurances in the law, convey unto the ſaid *N. D.* his heirs or aſſigns, the fee ſimple and inheritance in poſſeſſion free from incumbrances, (except the leaſes thereinafter ſpecified, and except a mortgage for the ſum of £9,300 and intereſt,) of and in the manor, advowſon of &c. And in conſideration thereof the ſaid *N. D.* thereby

Recital of a former agreement for ſale of manor and advowſon.

PURCHASES.

covenanted to pay to the ſaid *W. H.* his executors adminiſtrators, or aſſigns, the ſum of £20,000 upon the making and executing ſuch conveyances and aſſurances as aforeſaid. And whereas the title of the ſaid *W. H.* to a moiety of the ſaid advowſon, &c. is, as his counſel inſiſts, derived from and under *R.* late duke of *M.* deceaſed, and *H.* his wife. And the counſel for the ſaid *N. D.* being of opinion that the title of the ſaid moiety is defective, for that the ſame is not regularly deduced from and through the ſaid ducheſs, whoſe anceſtors' eſtate it was, hath inſiſted that the preſent conveyance of the ſaid moiety of the ſaid advowſon, ſhould be confirmed by *T. H.* now duke of *M.* the grandſon and heir of the ſaid ducheſs, or other the perſon or perſons claiming from or through her the ſaid ducheſs, but the neceſſity of ſuch confirmation is denied (*a*) by the counſel for the ſaid *W. H.* and the ſame, if neceſſary, cannot at preſent be obtained from the ſaid *T. H.* now duke of *M.* by reaſon that he is an infant under the age of 21 years, (to wit,) of the age of 19 years or thereabouts, and incapable at law to confirm the ſame title, (*b*) and therefore to prevent any delay in carrying the ſaid recited contract and agreement into execution, by reaſon of any

Recital that doubts ſubſiſt reſpecting the vendors title to a moiety of the advowſon, for want of confirmation by heir-at-law, of former owner.

Such heir being an infant, the confirmation not obtainable.

It has been agreed that part of the purchaſe

(*a*) See this queſtion diſcuſſed Elem. Con. Bk. 1. iv.

(*b*) See ante, p. 8.

diſputes in reſpect of the validity of the title of the ſaid *W. H.* to the aforeſaid moiety of the ſaid advowſon, it hath been agreed, by and between the ſaid *N. D.* and *W. H.* that the ſaid agreement ſhall be forthwith carried into execution, except ſo far as reſpects the ſaid advowſon, and for this purpoſe, that the ſaid *N. D.* ſhall only pay down unto him the ſaid *W. H.* the ſum of £14,000 part of the ſaid ſum of £20,000 the reſidue of the ſaid purchaſe money, and ſhall retain in his hands the ſum of £3000 as part of the ſaid ſum of £20,000 for ſuch time and purpoſes, and ſubject to ſuch agreements as hereinafter mentioned in that behalf. Now it is hereby declared and agreed by and between the ſaid *N. D.* and *W. H.* that the ſaid ſum of 3000l. part of the ſaid ſum of £20,000 ſo retained by the ſaid *N. D.* as aforeſaid, ſhall remain in the hands of the ſaid *N. D.* his heirs, executors, adminiſtrators, or aſſigns, (at ſuch intereſt, in the mean time, as hereinafter is mentioned,) until ſix months after the ſaid duke of *M.* ſhall attain his age of 21 years, or depart this life under that age, in truſt to pay the ſame unto the ſaid *W. H.* on his procuring the ſaid *T. H.* duke of *M.* and all other perſon or perſons claiming by, from, through, or under the ſaid ducheſs, within ſix months after the ſaid duke ſhall attain his ſaid age of 21 years, or in caſe of the death of the ſaid duke under that age, his heirs, and all

money ſhall be retained till confirmation can be procured.

Declaration & agreement accordingly.

PURCHASES.

other perſon or perſons claiming as aforeſaid, legally and effectually to confirm the title of the ſaid *W. H.* to the moiety of the aforeſaid advowſon, and upon the ſaid *W. H.* his heirs or aſſigns, joining in an effectual conveyance of the intirety of the ſaid advowſon to the ſaid *N. D.* his heirs and aſſigns. And the ſaid *N. D.* doth hereby, for himſelf, his heirs, executors, adminiſtrators, and aſſigns, covenant, promiſe, and agree, to and with the ſaid *W. H.* his executors, adminiſtrators, and aſſigns, in manner following, (that is to ſay,) that he the ſaid *N. D.* his heirs, executors, adminiſtrators, or aſſigns, ſhall and will well and truly pay, or cauſe to be paid, the ſaid ſum of £3000 ſo retained, and remaining in his hands as aforeſaid, and every part thereof, unto the ſaid *W. H.* his executors, adminiſtrators, and aſſigns, at the time herein before, in that behalf mentioned and agreed upon, and upon the ſaid advowſon being conveyed to him, his heirs and aſſigns, in the manner aforeſaid. And further, that in the mean time, and until the ſaid ſum of £3000 ſhall be paid as aforeſaid, he the ſaid *N. D.* his heirs, executors, adminiſtrators, or aſſigns, ſhall and will pay, or cauſe to be paid, unto the ſaid *W. H.* his executors, adminiſtrators, or aſſigns, intereſt for the ſaid ſum of £3000 at the rate of £4 per cent. per ann.; ſuch intereſt to commence and be accounted from the day of the date hereof up

Covenant by vendee that on confirmation by the heir, he will pay the money now agreed to be retained,

and intereſt in the mean time.

to the time of the payment of the ſaid ſum of £3000 as aforeſaid free of all taxes and other deductions whatſoever, parliamentary or otherwiſe. And further, that if the ſaid rectory ſhall happen to become vacant at any time or times before the advowſon thereof ſhall be conveyed to the ſaid *N. D.* his heirs and aſſigns, as aforeſaid, then, and in ſuch caſe, if he the ſaid *W. H.* his heirs or aſſigns, ſhall and do, from time to time, preſent ſuch perſon to the ſaid rectory as ſhall be nominated for that purpoſe by the ſaid *N. D.* his heirs or aſſigns, and do all proper and neceſſary acts for procuring ſuch perſon to be admitted, conſtituted, and inducted thereto; and if the perſon or perſons ſo to be nominated by the ſaid *N. D.* his heirs or aſſigns, and preſented to the ſaid rectory as aforeſaid, ſhall be thereupon duly admitted, inſtituted, and inducted, then, and in ſuch caſe, the ſaid *N. D.* his heirs, executors, or adminiſtrators, ſhall and will, well and truly pay, or cauſe to be paid, unto the ſaid *W. H.* his executors, adminiſtrators, or aſſigns, for or in reſpect of ſuch preſentation or preſentations as ſhall have been ſo made at the nomination of the ſaid *N. D.* his heirs or aſſigns, as aforeſaid, the ſum of £500 of lawful money of Great Britain, within one calendar month next after ſuch perſon ſhall have been ſo preſented, and in poſſeſſion of the ſaid rectory, with intereſt thereon from the time of ſuch pre-

If the rectory becomes vacant before confirmation of the advowſon and vendee's clerk be inducted, vendee to pay a part of the money retained.

PURCHASES.

sentation, such sum of £500 to be taken as part of the said sum of £3000 so covenanted, to be paid as aforesaid. Provided always, and it is hereby further agreed between the said parties hereto, that if the said rectory shall become vacant as aforesaid, before the advowson thereof shall be conveyed to the said *M. D.* his heirs and assigns, and if the person or persons presented by the said *W. H.* his heirs or assigns, upon the nomination of the said *N. D.* his heirs or assigns, pursuant to the covenant of the said *W. H.* in that behalf hereinbefore contained, and thereupon admitted, instituted, and inducted, shall afterwards be legally removed in consequence of any defect of title in the said *W. H.* his heirs or assigns, to make such presentation, and any other person shall be thereupon presented and instituted to the said rectory, then, and in such case, the said *W. H.* his heirs, executors, or administrators, shall and will repay to the said *N. D.* his executors, administrators, or assigns, the said sum of £500 with interest for the same, after the rate aforesaid, from the time of such presentation. Provided always nevertheless, and it is hereby agreed and declared, by and between the said *W. H.* and *N. D.* that in case the title of the said *W. H.* to the said moiety of the aforesaid avowson shall not in pursuance of the said agreement herein before in that behalf contained, be legally and effectually

If the clerk be afterwards removed on account of defect in title, such money to be repaid with interest.

If confirmation of the title be not obtained the money now agreed to be returned to belong to the vender.

confirmed by the ſaid duke of *M.* and ſuch other perſon or perſons claiming as aforeſaid, or in caſe of his deceaſe in the mean time, by his heirs, and ſuch other perſon or perſons ſo claiming, within the ſpace of ſix months after the duke of *M.* ſhall have attained his age of 21 years, or die under that age, then, and in ſuch caſe, and at all times from thenceforth, the agreement herein before contained, on the part of the ſaid *N. D.* for the payment of the ſaid ſum of £2000 and intereſt as aforeſaid, except as to the ſaid ſum of £500 part thereof, in caſe the ſame ſhall become due and payable to the ſaid *W. H.* his heirs and aſſigns purſuant to the aforeſaid agreement in that behalf, and all agreements herein before contained or referred unto, ſo far as the ſame reſpect the purchaſe of the inheritance of the ſaid advowſon ſhall ceaſe, determine, and be utterly void to all intents and purpoſes; and the ſaid *N. D.* his heirs, executors, and adminiſtrators, ſhall from thenceforth be intitled to retain and keep, to and for his and their own uſe and benefit, the whole of the ſaid ſum of £3000 or the reſidue thereof, after payment of the ſaid ſum of £500 to the ſaid *W. H.* his heirs or aſſigns as aforeſaid, as the caſe may require any thing herein before, or in the ſaid recited agreement contained to the contrary notwithſtanding. In witneſs, &c.

PURCHASES.

PURCHASES.

An Agreement upon the ſale of Premiſes by Executors, whereby Part of the purchaſe Money is to remain in the Purchaſer's Hands, until Minors (a) ſhall attain the Age of Twenty-one, and execute Conveyances.

ARTICLES of Agreement made, entered into and concluded upon this — day of — in the 35th year of the reign, &c. and in the year of our Lord 1795, between *E. T.* of ———, in the county of ——, widow, and *E. T.* of ———, in the county of ——, gentleman, executors of the laſt will and teſtment of *W. T.* of ———, aforeſaid, merchant, deceaſed, (*the vendors,*) of the one part, and the right honourable *R. R.* of ———, in the ſaid county of ——, and His Majeſty's moſt honourable Privy Council, (*the purchaſer,*) of the other part. Whereas the ſaid *W. T.* by his laſt will and teſtament in writing, bearing date the 5th day of *February*, in the year of our Lord 1761, did (among other things,) give to his ſon *W. T.* at his age of 21 years, all his eſtate, both freehold and copyhold, in Great Britain. To hold to him, his heirs and aſſigns, ſubject (among other things,) to the payment of the following legacies, (that is to ſay) the ſum of £500 to his daughter *S.* when ſhe

Recital that W. T. by his laſt will gave his ſon W. T. when of age, all his real eſtate, charged with certain legacies to his 4 young

(a) In what caſes minors can, and in what they cannot execute valid conveyances, and the reaſon of ſuch ability and diſability, ſee ante, p. 8.

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ſhould attain the age of 21 years; £500 to his daughter *E.* when ſhe ſhould attain the age of 21 years; and £500 to his ſon *E.* when he ſhould attain the age of 21 years; and £500 to ſuch child as his wife might be enſient with at the time of his death; and he willed, that in caſe ſuch child as his ſaid wife is enſient with, ſhould die before the age of 21 years, then that the ſaid laſt mentioned ſum ſhould be divided among all his children, except his ſaid ſon *William*; and he thereby gave all his perſonal eſtate, of what kind or nature ſoever, after payment of his debts, funeral expences, and legacies, given by his ſaid will, to be equally divided between his children, ſhare and ſhare alike, and he thereby appointed his ſaid wife, and his brother *E. T.* of Greenwich, gent. executors of his ſaid will; and whereas the ſaid teſtator died ſoon after the making his ſaid will, without revoking or altering the ſame, leaving the ſaid *E. T.* widow, and the ſaid *W. T.* his eldeſt ſon, and *E. T.* of Manningtree, aforeſaid, gent. his two ſons; and *E. T.* ſpinſter, and the ſaid *S. T.* his only daughters him ſurviving, and the ſaid *E. T.* the widow, was then enſient of a ſon who was afterwards born and named *Iſaac Turner*, and the ſaid *I. T.* afterwards died, an infant of tender years, and whereas the ſaid *E. T.* ſpinſter, hath attained the age of 21 years, and hath received the portion or ſum of money to which ſhe was en-

children when of age, and alſo to the child of which his wife was then enſient, provided ſuch child ſhould attain the age of 21 years, if not, to be divided among his other children, (except his ſaid ſon Wm.) and he gave all his perſonal eſtate, after payment of his debts, to be equally divided among his children.

That the teſtator died ſoon after without altering or revoking the ſame.

That E. T. the widow was then enſient of a ſon who died an infant, that one of the children had attained her age of 21 years and received her portion of

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titled under the ſaid will of her ſaid late father, and all the intereſt thereof, and hath executed as a releaſe or diſcharge for the ſame, and whereas the ſaid *S. T.* under the ſaid will of her ſaid father, is entitled to the ſum of £500 for her original portion, and to the ſum of 1661. 13s. 4d. for her ſhare or portion of the ſaid ſum of £500 bequeathed to ſuch enſient child as aforeſaid. And the ſaid *E. T.* the ſon, is alſo under the ſaid will entitled to the ſum of £500 for his original portion, and the like ſum of 1661. 13s. 4d. for his ſhare or proportion of the ſaid ſum of 500l. bequeathed to ſuch enſient child; and whereas by indenture of leaſe and releaſe, the leaſe bearing date the day next before the day of the releaſe, and the releaſe bearing even date with theſe preſents, and made or mentioned to be made, between the ſaid *W. T.* the ſon of *E. T.* widow, of the one part, of the ſaid *R. R.* of the other, in conſideration of the ſum of ————, in the ſaid indenture of releaſe, mentioned to be paid by the ſaid *R. R.* to the ſaid *W. T.* partly thereto and for the other conſiderations therein mentioned, the ſame *W. T.* and *E. T.* have granted and conveyed a meſſuage or tenement and certain fee farm lands and hereditaments therein mentioned and deſcribed, late the eſtate of ſaid *W. T.* deceaſed, unto and to the uſe of the ſaid *R. R.* his heirs and aſſigns, and for the conſiderations aforeſaid, the ſaid *W. T.* party

the money ſhe was entitled to under the will.

That the other 2 children are each entitled to 500l. under ſaid will, and their portion of the ſhare of the deceaſed child.

Recital of leaſe and releaſe, whereby

the ſaid W.T. & E.T. granted and conveyed a meſſuage freehold lands, &c. late the eſtate of ſaid W.H. deceaſed, to ſaid R. R. in fee, and ſaid W.T.'s inden-

thereto by the indenture of releaſe, hath covenanted to ſurrender a cuſtomary or copyhold meſſuage or tenement, and certain copyholds, lands, and hereditaments therein mentioned and deſcribed, late alſo the eſtate of the ſaid *W. T.* deceaſed, ſituate in ———, aforeſaid, and held of the manor of ———, in the ſaid county of ——, to the uſe of the ſaid *R. R.* his heirs and aſſigns. And whereas by indenture tripartite, alſo of even date with theſe preſents, and made, or mentioned to be made, between the ſaid *E. T.* widow, and *E. T.* of ———, of the 1ſt part, the ſaid *W. T.* and *E. T.* the ſons, and the ſaid *E. T.* and *S. T.* ſpinſters, of the 2d part, and the ſaid *R. R.* of the 3d part, in conſideration of the ſum of £900 therein mentioned, to be paid by the ſaid *R. R.* to the ſaid *E. T.* widow, and *E. T.* of ———, and for the other conſideration therein mentioned, they the ſaid *E. T.* and *E. T.* had aſſigned to the ſaid *R. R.* his executors, adminiſtrators, and aſſigns, a parcel of land therein mentioned, with the appurtenances, ſituate in ———, aforeſaid, being part of the perſonal eſtate of the ſaid *W. T.* deceaſed, to hold the ſame to the ſaid *R. R.* his executors, adminiſtrators, and aſſigns, for the reſidue and remainder of a term of 1000 years therein then to come and unexpired. And whereas the ſaid *E. T.* the ſon, and *S. T.* are ſtill under the age of 21 years, and the ſaid *S. T.* will

to the uſe of ſaid R. R. his heirs & aſſigns.

Recital of indenture, by which the ſaid executors aſſigned to ſaid R. R. a parcel of land, being part of the perſonal eſtate of ſaid W. T. deceaſed to ſaid R. R. for the reſidue of a term of 1000 years.

Recital that 2 of ſaid children are yet under age.

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not attain her age of 21 years until the 3d day of —— next, and the ſaid *E. T.* the ſon, will not attain his age of 21 years until the 6th day of —— ——, which will be in the year ——. And whereas the ſaid ſeveral premiſes ſo purchaſed by the ſaid *R. R.* as aforeſaid, and ſubject unto, and charged and chargeable with the payment of the ſaid ſeveral portions or ſums of money, to which, the ſaid *E. T.* the ſon of *S. T.* are reſpectively entitled as herein before is mentioned; and in regard the ſaid *E. T.* the ſon and *S. T.* cannot, during their reſpective minorities, execute effectual releaſes or diſcharges for the ſaid ſeveral portions or ſums, it was previous to the ſale of the ſaid premiſes to the ſaid *R. R.* agreed that the ſum of 1333l. 6s. 8d. being the amount of the ſaid ſeveral ſums to which the ſaid *E. T.* the ſon and *S. T.* are ſo reſpectively entitled, ſhould be retained by the ſaid *R. R.* out of the ſaid purchaſe monies, upon his entering into a bond or obligation for ſecuring the payment thereof with intereſt, at the time and manner hereinafter for that purpoſe mentioned, and by a bond or obligation in writing bearing even date with theſe preſents, the ſaid *R. R.* is become bound to the ſaid *E. T.* and *E. T.* of ————, in 2666l, 13s. 4d. with condition thereunder written for making void the ſame, on payment by the ſaid *R. R.* his heirs, executors, or adminiſtrators, of the ſum of 1333l. 6s. 8d. and the intereſt thereof, (ſuch in-

and that the ſaid premiſes are ſubject to the payment of the portions to which the ſaid children are entitled during their minorities,

and as they cannot execute effectual releaſes for ſaid ſums, it was agreed, previous to the ſale of ſaid premiſes, that the amount of ſaid ſeveral ſums to which the ſaid children are entitled, ſhould be retained by ſaid R. R. out of the ſaid purchaſe money upon his entering into a bond for payment thereof with intereſt as aftermentioned.

tereſt to be paid yearly) at the times and in the manner following, (that is to ſay) the ſum of 666l. 13s. 4d. being a moiety thereof, (with intereſt for the ſame moiety payable as aforeſaid,) on the 4th day of *Auguſt* next enſuing the date thereof, and of theſe preſents, and the like ſum of 666l. 13s. 4d. being the other moiety or half part thereof, together with ſuch intereſt for the ſaid laſt mentioned moiety, alſo payable as aforeſaid, on the 7th day of ———, which will be in the year of Lord ——, upon the truſts, for the intents and purpoſes, and ſubject to the proviſos and agreements expreſſed, declared, and contained of and concerning the ſame, in and by a certain indenture, intended to bear even date therewith and to be made between the ſaid *E. T.* and *E. T.* parties hereto, of the one part, and the ſaid *R. R.* of the other part, (meaning this preſent indenture). Now theſe preſents witneſs, that in conſideration of the premiſes, and in purſuance of the aforeſaid agreement in this behalf, it is hereby covenanted, concluded, declared, and agreed upon, by and between the ſaid parties, by theſe preſents, and particularly the ſaid *E. T.* and *E. T.* parties thereto, do hereby declare and agree, that they the ſaid *E. T.* and *E. T.* and the ſurvivor of them, and the executors, adminiſtrators, and aſſigns, of ſuch ſurvivors, ſhall and will ſtand poſſeſſed of and intereſted in the

Witneſs that it is agreed that the executors, &c. ſhall ſtand poſſeſſed of the ſaid ſum & intereſt upon truſt, as to a moiety of ſaid principal ſum

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for S T. one of the children, till ſhe ſhall attain the age of 21 years, or ſhall die under that age, or ſhall refuſe to execute ſuch aſſurances as hereinafter mentioned, &

ſaid ſum of 1333l. 6s. 8d. and the intereſt thereof, and every part thereof reſpectively, upon the truſts, for the intents and purpoſes, and ſubject to the proviſos and agreements hereinafter expreſſed, declared, and contained, of and concerning the ſame, (that is to ſay,) as to the ſum of 666l. 13s. 4d. being a moiety of the ſaid principal ſum, and the intereſt thereof, in truſt for the ſaid *S. T.* until ſhe ſhall attain the age of 21 years, (*a*) or ſhall die

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(*a*) Under the words, when ſhe ſhall attain the age of 21 years, though the legacy will not be ſo veſted as that, in caſe of her death it ſhall go to her repreſentatives, yet during her minority ſhe will be entitled to the intereſt of it, this being an exception to the general doctrine made in favour of children, or even grand children, but does not hold as to brothers as collaterals; it is therefore very properly declared to be in truſt for her till ſhe attain 21, though if this exception was not admitted, and her title did not take place to any purpoſe till ſhe was 21, it ought to have been in truſt for all entitled to the perſonal eſtate under the will; though the purchaſer has taken care to ſecure himſelf from the claims of the minors as to the real property, it does not appear to me, that under this inſtrument he is ſufficiently diſcharged as to the payment of the ſum which their intereſt might be valued at, in the leaſehold premiſes aſſigned, for the money which has been retained is that ſum only which is charged on the real eſtate, and nothing is reſerved for their ſhare in this perſonality.

The executors diſcharge is ſufficient ſecurity to the purchaſer; the legatees having their remedy againſt them, and it was not incumbent on the purchaſer to take any care but for himſelf, this deed, therefore, the object of which is his ſecurity only, need not provide for theirs, and accordingly does not.

N. B. *This note ſubjoined to the original draft.*

under that age, or ſhall neglect or refuſe to execute ſuch deed or deeds as hereinafter is or are mentioned; and in caſe the ſaid *S. T.* ſhall attain her age of 21 years, and ſhall execute ſuch deed or deeds as aforeſaid, then upon truſt, to pay the ſum of 666l. 13s. 4d. and all intereſt accrued due in reſpect thereof unto the ſaid *S. T.* or her aſſigns, for her and their own uſe and benefit; and in caſe the ſaid *S. T.* ſhall die under the age of 21 years, then they the ſaid *E. T.* and *E. T.* and the ſurvivor of them, and the executors, adminiſtrators, and aſſigns of ſuch ſurvivor, ſhall ſtand poſſeſſed of and intereſted in the ſaid ſum of 666l. 13s. 4d. and all intereſt accrued due, and to become payable in reſpect of the ſame, in truſt for ſuch perſon or perſons as ſhall be entitled thereto, under or by virtue of the ſaid will of the ſaid *W. T.* deceaſed; and as to the like ſum of 666l. 13s. 4d. being other moiety of the ſaid principal ſum in truſt for the ſaid *E. T.* the ſon, until he ſhall attain his age of 21 years, or ſhall die under that age, or ſhall neglect or refuſe to execute ſuch deed or deeds as aforeſaid; and in caſe the ſaid *E. T.* the ſon, ſhall attain the age of 21 years, and ſhall execute ſuch deed or deeds as aforeſaid, then upon truſt, to pay the ſaid laſt mentioned ſum of 666l. 13s. 4d. and all intereſt accrued due in reſpect of the ſame, to the ſaid *E. T.* or his aſſigns, for his and their own uſe and benefit. Provided

in caſe ſaid S. T. ſhall attain ſaid age and execute ſuch deeds, then upon truſt to pay ſaid ſum with intereſt, to ſaid S. T. her aſſigns, &c. and in caſe the ſaid S. T. ſhall die, under ſaid age, the executors to ſtand poſſeſſed of ſaid ſum and intereſt, in truſt of the perſons entitled thereto under ſaid will,

and as to the other moiety of the ſaid monies upon the like truſts.

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Proviſo that if S. T. on coming of age refuſe to execute a diſcharge of the premiſes from the 666l. 13s 4d.

The purchaſer may retain the ſame to his own uſe.

vided alſo, and it is likewiſe declared and agreed upon, by and between the ſaid parties to theſe preſents, that in caſe the ſaid *E. T.* the ſon, ſhall attain his age of 21 years, and ſhall for the ſpace of ſix calendar months then next enſuing, neglect or refuſe to execute or join in executing any deed or deeds which ſhall or may be neceſſary or expedient for effectually releaſing and diſcharging the ſaid ſeveral premiſes ſo purchaſed by the ſaid *R. R.* and the ſeveral tenants, proprietors, and occupiers thereof, of and from the payment of the ſaid ſum of 666l. 13s. 4d. to which the ſaid *E. T.* the ſon, is entitled, and the intereſt thereof, and every part thereof reſpectively, and of and from all claims and demands in reſpect of the ſame, upon tender being made by the ſaid *R. R.* his heirs or aſſigns, unto the ſaid *E. T.* the ſon, of the ſaid laſt mentioned ſum of 666l. 13s. 4d. and of the intereſt accrued due in reſpect thereof, and of ſuch deed or deeds for execution, then, and in ſuch caſe, it ſhall and may be lawful to and for the ſaid *R. R.* his heirs, executors and adminiſtrators, to retain the ſaid laſt mentioned ſum of 666l. 13s. 4d. without being afterwards anſwerable for, or obliged to pay any intereſt for or in reſpect of the ſame, in order to indemnify him the ſaid *R. R.* his heirs, executors, adminiſtrators, and aſſigns, of and from the payment of the ſaid laſt mentioned ſum of 666l. 13s. 4d. and all claims and demands in

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Similar proviſo as to E. T.

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respect of the same, the said herein before recited bond or obligation, or any thing therein contained to the contrary thereof, in anywise notwithstanding. In witness, &c.

Agreement and Covenant to indemnify *a Purchaser of an* Advowson *from the Payment of a* Rent Charge *payable to the Poor of the Parish.*

To all to whom these presents shall come, I *I*—— *F*——, of ————, in the county of ——, send greeting. Whereas *T. M.* Esq. being seised in fee simple, (amongst other lands and hereditaments,) of certain lands in the parish of ————, in the county of ——, and of the rectory or parsonage impropriate, at ———— aforesaid, and of the tithes, both great and small, thereunto belonging, and also of the advowson of ————, herein after mentioned, to have been purchased by *W. B.* of ————, in the city of *London*, gent. did in and by his last will and testament, in writing, bearing date on or about the 7th day of *April*, which was in the year of our Lord ——, executed and attested in such manner as is by law required for passing of real

Recital of a devise of the advowson.

eſtates, give and deviſe the ſame unto his nephew *T. M.* ſince deceaſed, his heirs and aſſigns for ever, ſubject (amongſt other charges which have been ſince ſatisfied,) to the payment of five pounds to the poor of the pariſh of ———, to be diſpoſed of from time to time, by the churchwardens and overſeers of the poor, for the time being, as they ſhould think fit. And whereas the ſaid teſtator hath ſince departed this life without revoking or altering his ſaid will, and the ſaid *T. M.* hath ſince departed this life inteſtate, leaving *F.* the wife of *R. D.* of ———, in the hamlet of ———, and pariſh of ———, in the county of ———, his only ſiſter and heir at law him ſurviving, and who is alſo ſince dead, having by her laſt will and teſtament deviſed the ſaid lands, tithes, rectory, and advowſon of ———, unto the ſaid *I. F.* and his heirs. And whereas by indenture of bargain and ſale enrolled, bearing date on or about the twenty-third day of *May*, one thouſand ſeven hundred and ninety-ſix, and made, or mentioned to be made, between the ſaid *R. D.* and *F.* his wife, of the one part, and *A. N.* of ———, in the pariſh of *Saint Michaels*, in the county of *Middleſex*, gent. of the other part, and alſo by a fine levied in purſuance of a covenant contained in the ſame indenture of bargan and ſale, in Trinity term, in the twentieth year of his majeſty king *George* the III. wherein the ſaid *A. N.*

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Subject to a rent charge payable to the pariſh.

death of teſtator.

Recital of bargain and ſale and fine.

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was plaintiff, and the ſaid *R. D.* and *F.* his wife, were defendants, the ſaid advowſon of ———, with the glebe lands and appurtenances thereunto belonging, were, in conſideration of the ſum of £600 conveyed and aſſured to and to the uſe of the ſaid *A. N.* his heirs and aſſigns for ever, who purchaſed the ſame as a truſtee for *T. S.* of ——— ———, in the ſaid county of ———, Eſq. deceaſed, and who by his laſt will and teſtament, in writing, bearing date the thirty-firſt day of *October*, one thouſand ſeven hundred and ſeventy-nine, duly executed and atteſted, deviſed all his meſſuages, lands, tenements, and hereditaments, whatſoever and whereſoever, to the ſaid *A. N.* and *C. L.* (who afterwards died in the life time of the ſaid *A. N.*) and their heirs, in truſt, to ſell the ſame.

Recital of the ſale of the advowſon.

And whereas the ſaid *A. N.* in purſuance of the ſaid will of the ſaid *T. S.* did ſell the ſaid advowſon of ———, unto the ſaid *W. B.* and the ſame are intended, by indentures of leaſe and releaſe already prepared, the releaſe mentioned to be made between the ſaid *A. N.* of the one part, and the ſaid *W. B.* and *T. T.* therein named, of the other part, to be conveyed unto and to the uſe of the ſaid *W. B.* and *T. T.* and the heirs and aſſigns of the ſaid *W. B.* for ever; nevertheleſs as to the eſtate and intereſt of the ſaid *T. T.* in truſt for the ſaid *W. B.* and his heirs and aſſigns. *(a)* And whereas the ſaid *R. D.* and *F.* his wife, at

(a) Note to the indenture here recited, poſt. *title* Releaſe.

the time of the ſale by them of the ſaid advowſon of ———, did agree that the ſame ſhould be freed from the payment of the ſaid ſum of 5l. a year, ſo charged thereon by the ſaid will of the ſaid *T. M.* (amongſt other hereditaments,) for the benefit of the poor of the ſaid pariſh of ————, as aforeſaid. And whereas no ſecurity from the ſaid *R. D.* to the ſaid *A. N.* for the purpoſe of indemnifying him therefrom as aforeſaid, was ever made or executed, and therefore the ſaid *W. B.* hath requeſted the ſaid *I. F.* to indemnify him and his heirs from the payment thereof, which he the ſaid *I. F.* hath agreed to do in manner hereinafter mentioned. Now know ye, that in purſuance of the ſaid agreement, and in order to indemnify the ſaid *W. B.* his heirs, executors, adminiſtrators, and aſſigns, and alſo the ſaid advowſon of ———, glebe lands, and appurtenances ſo purchaſed by him as aforeſaid, from the payment of the ſaid ſum of 5l. a year ſo charged thereon, (amongſt other hereditaments as aforeſaid,) and alſo of and from the payment of all arrears thereof, he the ſaid *I. F.* doth, for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid *W. B.* his heirs, executors, adminiſtrators, and aſſigns, by theſe preſents, in manner following, (that is to ſay,) that he the ſaid *I. F.* and ſuch perſon or perſons as ſhall from time to time be

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Agreement, &c. to indemnify purchaſer from ſaid rent charge.

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entitled to the freehold of and in the ſaid lands and hereditaments, in the ſaid pariſh of ———, whereof the ſaid *T. M.* ſo died ſeiſed as aforeſaid, ſhall and will well and truly pay, or cauſe to be paid, unto the churchwardens and overſeers of the poor for the time being, of the ſaid pariſh of ———, all ſuch ſum and ſums of money as is or are now due, or ſhall or may at any time or times hereafter become due and owing to the ſame churchwardens or overſeers of the ſaid pariſh of ———, in reſpect of the ſaid annual ſum of 5*l.* and the arrears thereof now due, ſo charged upon the ſame laſt mentioned premiſes, and the ſaid advowſon of ———, and glebe lands, and appurtenances ſo purchaſed by the ſaid *W. B.* as aforeſaid. And alſo that he the ſaid *I. F.* his heirs, executors, and adminiſtrators, ſhall and will from time to time, and at all times hereafter, well and ſufficiently ſave, defend, keep harmleſs and indemnified, the ſaid *W. B.* his heirs, executors, adminiſtrators, and aſſigns, and every of them, and alſo the ſaid advowſon of ———, glebe lands, and appurtenances thereunto belonging, intended to be conveyed by the ſaid in part recited indentures of leaſe and releaſe, ſo prepared as aforeſaid, of, from, and againſt the payment of the ſaid ſum of 5*l.* a year, ſo charged thereon, amongſt other hereditaments, as aforeſaid, and all arrears thereof, and alſo of, from, and againſt, all

actions, ſuits, cauſe and cauſes of action, and ſuit, coſts, charges, damages, and expences, which ſhall or may be commenced, carried on, or proſecuted againſt, or expended, ſuſtained, or borne by him the ſaid *W. B.* his heirs, executors, adminiſtrators, or aſſigns, or to which he, they, or any of them, ſhall or may, at any time or times hereafter, become ſubject or liable for, or on account thereof, or of the arrears thereof, in anywiſe. In witneſs, &c.

II. Agreements relative to Trade, &c.

Articles of Copartnership, by Indenture, *between* (*a*) Brewers, *in which a Son of one of the exiſting Copartners is admitted into the Buſineſs, in purſuance of former Articles.*

This Indenture made &c. Between *M. B.* of &c. widow, of the firſt part, *S. F.* of, &c. gentleman,

(*a*) Though articles of copartnerſhip ſeem principally in the nature of contracts *executory*, being for the performance or forbearance of ſomething in *futuro*, (unleſs where they include an aſſignment of effects,) yet they are frequently prepared in the form of an *indenture*. The form is, however, immaterial, ſo that when they are made the inſtrument of any *transfer* of property, they are ſealed and *delivered* by the party by whom ſuch transfer is intended to be effected, and be impreſſed with a *deed* ſtamp.

COPARTNERSHIP.

of the ſecond part, *P. C.* of, &c, brewer, of the third part, *I. H.* of, &c. brewer, of the fourth part, and *I. C.* of, &c. brewer, of the fifth part,

Recital of former articles.

WHEREAS by articles of agreement, tripartite, bearing date the 15th day of *Auguſt*, 1792, made between *L. C.* of, &c. Eſq. (ſince deceaſed) of the firſt part, *A. T.* of, &c. widow, and the ſaid *M. B.* party hereto of the ſecond part, the ſaid *S. F. P. C. I. H.* and *M. M.* then of, &c. brewers, of the third part, reciting among other things that they the ſaid *M. B. S. F. W. M. I. H.* and *P. C.* did intend to carry on the trade or buſineſs of a common brewer, in partnerſhip, for the term of eight years.

In which it was agreed that the ſon of one of the parties ſhould be taken as an apprentice for five years.

IT WAS WITNESSED, and the ſaid *M. B. S. F. W. M. I. H.* and *P. C.* for the conſiderations therein mentioned, did thereby, for themſelves, their executors and adminiſtrators, among other things, covenant, promiſe, and agree, to and with the ſaid *L. C.* his executors and adminiſtrators, that they the ſaid *M. B. S. F. W. M. I. H.* and *P. C.* or ſuch other perſon or perſons as ſhould be then concerned in, or carry on the ſaid trade in or upon the brewhouſe and premiſes therein covenanted to be erected and built in a certain lane called *Morgan's-Lane*, in the ſaid pariſh of *St. Olave, Southwark*, ſhould and would at any time within the ſpace of 13 years then next enſuing the date thereof, take any ſon of the ſaid *L. C.* as ſhould be named in a notice to be for that pur-

poſe given, as an apprentice to them, him, or her, in the ſaid trade of a brewer, for the term of five years; and at the end of the ſaid five years ſhould, upon having ſix months notice under the hand of the ſaid *L. C.* his executors or adminiſtrators, take the ſaid ſon who ſhould have ſo ſerved his apprenticeſhip, and ſhould have attained his age of 21 years, a partner with them, him, or her, in the ſaid trade for one fifth part or ſhare in the ſaid ſtock and trade, upon the payment of the amount or value of ſuch fifth part, on valuation, to be then taken of the ſame in ſuch manner as is uſually practiſed among brewers, and that the ſaid ſon ſhould be entitled to one fifth part of the ſaid joint trade and the profits thereof, upon articles of copartnerſhip to be entered into with reaſonable and uſual covenants, for the term of 12 years, if ſuch ſon ſhould ſo long live, with a power to determine the ſame as therein and hereinafter mentioned, as in and by the ſaid recited articles of agreement, reference being thereunto had may more fully appear. AND WHEREAS by articles of partnerſhip bearing date the 24th day of *Auguſt*, 1782, the ſaid *M. B. S. F. P. C. I. H.* and *W. M.* agreed to be and continue copartners together in the ſaid trade or buſineſs of a brewer from the date thereof, for the term of eight years, in the ſhares and parts following, (the whole being divided in 24 parts or ſhares,)

COPARTNERSHIP.

And at the expiration, if he ſhould have attained the age of 21 years, to be admitted to be a partner for one fifth part on payment of the amount or value thereof, on a valuation to be then made.

Recital of articles for 8 years, and how the profits were to be divided.

COPARTNERSHIP.

that is to ſay, the ſaid *M. B.* ſix ſhares or parts, the ſaid *T. F.* ſix parts or ſhares, the ſaid *P. C.* five parts or ſhares, the ſaid *I. H.* four parts or ſhares, and the ſaid *W. M.* three parts or ſhares. AND WHEREAS the ſaid *M. B. I. F. P. C. I. H.* and *W. M.* carried on the ſaid trade or buſineſs in partnerſhip, in the proportions aforeſaid, during the ſaid term of eight years, and alſo until on or about the 19th day of *December* laſt, when a commiſſion of bankruptcy was awarded and iſſued againſt the ſaid *W. M.* and he was thereupon duly declared a bankrupt, whereby the ſaid partnerſhip as to him became abſolutely diſſolved, and the parts and ſhares of the ſaid *W. M.* of and in the ſaid copartnerſhip ſtocks and effects, are now become veſted in the ſaid *M. B. S. F. P. C.* and *I. H.* who have, ever ſince the ſaid 19th day of *December* laſt, and now do carry on the ſaid trade or buſineſs of a brewer, in copartnerſhip. AND WHEREAS in purſuance of the ſaid recited articles of agreement of the 15th day of *Auguſt*, 1792, the ſaid *I. H.* did take the ſaid *I. C.* party hereto, one of the ſons of the ſaid *L. C.* as an apprentice, for the term of five years, which is now expired, and the ſaid *I. C.* having attained the age of 21 years, they the ſaid *M. B. S. F. P. C.* and *I. H.* have agreed to accept and take the ſaid *I. C.* as a copartner with them in the ſaid trade for one

That the parties carried on the buſineſs, and one of them became a bankrupt.

That agreeable to the articles of the 15th of Auguſt 1792, a ſon had been taken apprentice for five years, which is now expired, and he having attained the age of 21 years, is to be admited a partner.

fifth part thereof. And whereas the ſaid *M. B. S. F. P. C.* and *I. H.* together with the ſaid *I. C.* did, on or about the 28th day of *June* laſt, cauſe an inventory and appraiſement to be made and taken of all leaſes for terms of years, and of all mortgages, ſecurities, houſes, brewhouſes, warehouſes, lofts, cellars, and of all other erections and buildings, and alſo of all and ſingular the goods, wares, malts, hops, drugs, houſes, utenſils, commodities, and effects, whatſoever, of or belonging to them the ſaid *M. B. S. F. P. C.* and *I. H.* and by them uſed or employed in the ſaid trade or buſineſs of a brewer, and of all debts and ſums of money due and owing to the ſaid trade or buſineſs, or to the ſaid *M. B. S. F. P. C.* and *I. H.* on account thereof, which ſaid leaſes, mortgages, houſes, buildings, goods, utenſils, ſtock, debts, and effects, upon a juſt and fair eſtimate and valuation, amount to the full and juſt ſum of £——, over and above ſundry debts due and owing by them the ſaid *M. B. S. F. P. C.* and *I. H.* on account of the ſaid joint trade, particularly mentioned at the foot of the ſaid reſt, which ſaid reſt or inventory and appraiſement is entered in five ſeveral books, and ſigned by all the ſaid parties hereto, with their reſpective hands writing. And they do hereby ſeverally declare the ſaid inventory, appraiſement, and valuation, to be juſt and right. AND WHEREAS the ſaid *M. B. S. F. P. C. I. H.*

COPARTNERSHIP.

That the parties had cauſed a reſt to be made in the buſineſs, & an inventory and appraiſement to be made of all leaſes, meſſuages, buildings, fixtures, utenſils, &c. which amounted to £——

COPARTNERSHIP.

and *I. C.* have agreed to become and continue copartners and joint traders and dealers together, in the ſaid trade or buſineſs of a brewer, during the term, and upon the conditions, and under and ſubject to the ſeveral covenants, proviſos, and agreements, hereinafter mentioned and contained, with the ſaid capital ſtock in trade of ——— and that the ſaid capital ſtock, and the profits ariſing from the ſaid joint trade, ſhall be divided into ſuch parts or ſhares as are hereinafter mentioned (*a*); and in order that the ſaid *I. C.* may be poſſeſſed of eight parts or ſhares, and one fifth part of a ſhare of and in the ſaid leaſes, mortgages, houſes, buildings, goods utenſils, ſtock, debts, and effects, mentioned in the ſaid inventory and appraiſement. NOW THIS INDENTURE WITNESSETH, that for and in conſideration of the ſum of ——— of lawful money of Great Britain, by him the ſaid *I. C.* in hand well and truly paid, at or before the ſealing and delivering of theſe preſents to them the ſaid *M. B. S. F. P. C.* and *I. H.* in the ſeveral

That the parties have agreed to carry on the buſineſs with that capital, which with profits, are to be divided as after mentioned.

Witneſs that the partner admitted having paid his ſhare.

(*a*) An equal ſhare of the *profits* and *loſs* of the trade, according to the capitals of the reſpective parties, is eſſential to conſtitute a copartnerſhip, for if the advantages and diſadvantages were not reciprocal, the capital would be in the nature of a *loan* of each to the other, and might be an uſurious contract. See Grace v. Smith; 2 Blac. Rep. 298. Hoare v. Dawes; Dougl. 371. Cooper v. Eyre; 1 H. Blac. 37.

ſhares and proportions following, that is to ſay, the ſum of ——— thereof to the ſaid *M. B.* the like ſum of ——— other part thereof to the ſaid *S. F.* The ſum of ——— other part thereof to the ſaid *P. C.* and the remaining ſum of ——— in full thereof, to the ſaid *I. H.* the receipt of which ſaid ſeveral ſums of money making together the ſaid ſum of ——— the ſaid *M. B. S. F. P. C.* and *I. H.* do hereby ſeverally confeſs and acknowledge and themſelves to be thereby fully paid and ſatisfied, they the ſaid *M. B. S. F. P. C.* and *I. H.* have bargained, ſold, aſſigned, and ſet over, and by theſe preſents, do bargain, ſell, aſſign, and ſet over unto the ſaid *I. C.* his executors and adminiſtrators, eight parts or ſhares, and one-fifth part of a ſhare, the whole into 41 parts or ſhares to be divided, of all and ſingular the leaſes, mortgages, houſes, buildings, goods, utenſils, ſtock, debts, and effects whatſoever, mentioned in the ſaid inventory and appraiſement. TO HAVE AND TO HOLD the ſaid eight parts or ſhares, and one fifth part of a ſhare, of and in the ſaid leaſes, mortgages, houſes, buildings, goods, utenſils, ſtock, debts, and effects hereby aſſigned or intended ſo to be, unto the ſaid *I. C.* his executors and adminiſtrators, as and for his and their own proper goods, chattels, and effects. AND THIS INDENTURE FURTHER WITNESSETH, that they the ſaid *M. B.*

COPARTNERSHIP.

The others aſſign to him his portion of the effects.

Further wit-

COPARTNERSHIP.

S. F. P. C. I. H. and *I. C.* for and in consideration of the mutual truſt, confidence, and good opinion which they have and repoſe in each other; and in purſuance of the ſaid recited articles of agreement of the 15th of *Auguſt* 1792, have mutually covenanted, declared, and agreed, and they and each and every of them, doth reſpectively, for herſelf and himſelf, and for her and his reſpective executors and adminiſtrators, mutually covenant, promiſe, grant, and agree, to and with each other, her and his executors and adminiſtrators, by theſe preſents, in manner following, that is to ſay, that they the ſaid parties to theſe preſents, ſhall and will become and continue copartners and joint traders and dealers together, in the ſhares and proportions hereinafter mentioned, in the art, trade, buſineſs, or employment of a brewer, and in all things belonging or relating thereto, or in ſuch other trade or buſineſs as they the ſaid parties to theſe preſents ſhall mutually agree to carry on and follow, for, and during, and unto the full end and term of 12 years, to commence and be computed from the 28th day of *June* laſt, if all the ſaid parties ſhall ſo long live, (determinable, nevertheleſs, as to the ſaid *I. C.* as hereinafter mentioned,) and that the ſaid joint trade and copartnerſhip, and all buyings and ſellings relating thereto, ſhall be managed, exerciſed, and carried on in the names of *M. B.* and Co. in

neſs that in Conſideration of mutual truſt, &c. the parties agree to carry on the buſineſs together in copartnerſhip for 12 years.

Determinable as after mentioned.

the ſame brewhouſe and premiſes where the ſaid *M. B. S. F. P. C.* and *I. H.* have, for ſome time paſt, carried on the ſaid trade of a brewer, ſituate in ——— aforeſaid, or in ſuch other place or places as the ſaid parties to theſe preſents ſhall hereafter, from time to time, during the ſaid copartnerſhip, by mutual conſent and agreement provide for that purpoſe. And it is hereby declared, by and between all the ſaid parties hereto, that the ſaid ſum of —— ſhall be the capital ſtock or fund for carrying on the ſaid joint trade and copartnerſhip, and that nine parts or ſhares, and theſe eighth parts of a ſhare of and in the ſaid capital ſtock or fund, the whole into 41 parts or ſhares, to be divided, amounting to the ſum of ——, ſhall belong to the ſaid *M. B.* and nine parts or ſhares, and three eighth parts of a ſhare thereof, amounting to the like ſum of ——, ſhall belong to the ſaid *S. F.* and eight parts or ſhares, and one fifth part of a ſhare thereof, amounting to the ſum of ——, ſhall belong to the ſaid *I. C.* and ſeven parts or ſhares, and eight-tenths of a ſhare thereof, amounting to the ſum of ——, ſhall belong to the ſaid *P. C.* and the remaining ſix parts or ſhares thereof, and one quarter part of a ſhare, amounting to the ſum of —— ſhall belong to the ſaid *I. H.* and that the profits and gains which ſhall be had and made by reaſon or means of the ſaid joint trade, and all loſſes attend-

COPARTNERSHIP.

That capital ſhall conſiſt of ——— of which the profits are to be divided in manner aftermentioned.

COPARTNERSHIP.

ing the ſame ſhall be divided between the ſaid parties, in the ſhares and proportions, and at the times, and in manner hereinafter mentioned. (*a*)

That the leaſes valued in the inventory ſhall be conſidered part of the capital.

AND IT IS ALSO AGREED, that all the leaſes valued in the ſaid recited inventory and appraiſement, ſhall be deemed and taken as part of the capital or joint ſtock for carrying on the ſaid copartnerſhip trade, and the perſons or perſon to whom ſuch leaſe or leaſes are granted, and their reſpective executors and adminiſtrators ſhall be, and remain, and continue truſtees for the ſeveral parties hereto, according to their reſpective ſhares and intereſts in the capital ſtock, in the ſame manner, to all intents and purpoſes, as if the ſaid leaſe and leaſes had been granted to all the ſaid parties to theſe preſents, in their joint names.

That all mortgages, &c. ſhall be taken in the names of all the parties.

AND ALSO, that all mortgages, (*b*) leaſes, bonds, ſpecialties, and ſecurities, and all other writings whatſoever, which ſhall at any time or times hereafter during this copartnerſhip be had, made, or taken for any houſes, warehouſes, ſtorehouſes, vaults, cellars, or other premiſes, money, debts, or other matter, cauſe, or thing whatſoever, in anywiſe concerning the ſaid joint trade, ſhall be made and taken in the names of all the ſaid parties to

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(*a*) See ante, 93, n. (a)

(*b*) See Willett v. Chambers, Cowp. 814. Harriſon v. Jackſon; 7 Term Rep. 207.

theſe preſents. AND FURTHER, that they the ſaid parties to theſe preſents ſhall and will, from time to time, and at all times during the continuance of this copartnerſhip, be true and juſt to each other in all accounts, dealings, and tranſactions relating to or concerning the ſaid joint trade, and ſhall not wittingly or willingly do, commit, or ſuffer any act, matter, or thing whatſoever whereby the ſaid joint trade or ſtock, or any part thereof, ſhall or may be any ways diminiſhed, hurt, damnified, or leſſened. AND ALSO, that each of them the ſaid parties, (except the ſaid *M. B.*) ſhall and will give their beſt aſſiſtance in getting in the debts which ſhall or may be due and owing or belonging to the ſaid copartnerſhip trade, or to the ſaid parties hereto, in reſpect thereof, and that neither of them the ſaid parties ſhall and will do any thing whatſoever to moleſt or hinder the getting in and receiving the ſame, but ſhall and will, from time to time, and at all times during the copartnerſhip, uſe his beſt and utmoſt endeavours for the managing, promoting, and carrying on the joint trade for the joint and proportionable benefit and advantage of all the ſaid parties, according to the true intent and meaning of theſe preſents, AND LIKEWISE, that they the ſaid parties, and each of them, ſhall and will conſult and adviſe with each other touching and concerning their buyings, ſellings, receipts, payments,

COPARTNERSHIP.

That they will be faithful to each other,

And give their aſſiſtance (except M.B.) in getting in debts, &c.

and conſult with each other in all their dealings.

COPARTNERSHIP.

and dealings in, about, and belonging to the ſaid joint trade, from time to time, and at all times during the continuation of this copartnerſhip.

Not to buy or ſell above the amount of £500 without the conſent of all the other parties.

AND FURTHER, that neither of them the ſaid parties ſhall or will during the ſaid partnerſhip, at any time, buy, or purchaſe, or ſell, or deliver, or make, or enter into any contract, bargain, or agreement, for the purchaſe, or for the ſale and delivery of any goods, wares, merchandiſes, or effects, for, or on account of, or belonging to the ſaid joint trade, over and above the amount or value of £500, without the conſent of all the others of the ſaid parties firſt had and obtained for that purpoſe, nor ſhall or will during the ſaid co-

Nor give credit.

partnerſhip truſt, give credit, or day of payment, to any perſon or perſons, againſt or contrary to any caution or warning that ſhall have been before given by either of the ſaid parties, in writing, on pain of being chargeable with and liable to anſwer and make good to the ſaid joint ſtock, all ſuch ſum and ſums of money, charges, and expences, which the ſaid joint trade or ſtock ſhall or may ſuffer, ſuſtain, loſe, or be put into, by reaſon or means of ſuch purchaſe, or ſale, or contract, or agreement, for the purchaſe or ſale of any ſuch goods or effects, without ſuch conſent, or for, or by reaſon or means of ſuch truſt, credit, or day of payment being given as aforeſaid, contrary to ſuch caution or warning, out of the offending

parties ſhares of and in the ſaid joint ſtock, or the profits thereof, at the then next general reſt, or account to be made up and taken by and between the ſaid parties. And alſo that neither of them the ſaid parties ſhall or will during the continuance of the ſaid copartnerſhip, releaſe, abate, or compound (*a*) any debt, duty, or demand, due or belonging to the ſaid joint trade for leſs than ſhall be really due (uſual abatements only excepted) nor releaſe, or diſcontinue any action or ſuit to be brought for any ſuch debt, duty, or demand without the conſent of the major part of the ſaid partners, on pain of paying and making good the ſame, and all coſts and charges on account thereof, out of the offending parties ſhare of and in the ſaid joint ſtock, and the profits thereof at the next general reſt or account; And likewiſe that neither of them the ſaid parties ſhall or will at any time or times during the continuance of the copartnerſhip directly or indirectly be concerned in, or uſe, exerciſe, or follow the art, trade, buſineſs or employment of a brewer, or any other art, trade, or buſineſs whatſoever, for her, or his own ſeparate uſe or benefit, or together, with or in the name

COPARTNERSHIP.

Not to compound any debt without conſent

Nor releaſe actions.

nor carry on any other buſineſs.

(*a*) This and the ſubſequent proviſion are neceſſary in deeds of copartnerſhip, as the act of one of the parties will be preſumed to be the act of both and be binding upon the other, unleſs he can prove a diſclaimer, &c. See Salk. 292. pl. 23. Lane *v.* Williams, 2 Vern 277.

COPARTNERSHIP.

or names of any other perſon or perſons, unleſs the ſame is ſo done by the mutual conſent of all the ſaid parties, and then only for and upon the joint and proportionable account, benefit, and advantage of all the ſaid parties to theſe preſents.

The capital and profits not to be ſubject to private debts.

AND IT IS HEREBY expreſsly covenanted and agreed by and between all the ſaid parties to theſe preſents that no part of the ſaid joint ſtock, or the increaſe, profits, or produce thereof, or any debts or other effects any ways appertaining or belonging to the ſaid capital ſtock in copartnerſhip, ſhall in any manner be ſubject to or charged with the payment of the particular private debts or incumbrances of either of the ſaid parties. AND ALSO that neither of them the ſaid parties ſhall or will be bail, ſecurity, or otherwiſe engaged for any perſon or perſons whomſoever, unleſs the ſame is done for the real benefit of the ſaid joint trade, without the conſent of the others of the ſaid parties firſt had and obtained, and that if any loſs or damage ſhall happen or come to the ſaid joint trade or ſtock in copartnerſhip, by reaſon or means of any ſecurity or incumbrance already entered into by any of the ſaid parties, or that ſhall hereafter be entered into by any of them without ſuch conſent as aforeſaid, then the ſame ſhall be borne, ſuſtained, anſwered, and made good by the party or parties who entered into and contracted the ſame, out of her, his or

ſhall not be bail or ſecurity unleſs, &c.

their own proper eſtate and effects, ſo that the others of them the ſaid parties, and the ſaid joint ſtock in trade ſhall in no wiſe be charged with or damnified by the ſame. COPARTNERSHIP.

AND IT IS HEREBY FURTHER AGREED and declared that no apprentice or apprentices ſhall be taken by any of the ſaid parties during this co-partnerſhip, but by and with the joint conſent of all the ſaid parties hereto, and that all and every apprentice and apprentices who ſhall be ſo taken, ſhall be employed in the ſaid joint trade, and that all ſuch ſum and ſums of money, recompence and gratuity which ſhall be received or ſecured to be paid, with or for the taking ſuch apprentice or apprentices ſhall be brought into the ſaid co-partnerſhip ſtock and placed to the credit thereof, for the joint and proportionable benefit of all the ſaid copartners, and the party or parties to whom ſuch apprentice or apprentices ſhall be bound ſhall receive out of the ſaid joint ſtock after the rate of 25l. per annum for the board, lodging and maintenance of every ſuch apprentice. AND ALSO that no clerk or clerks, brewer or brewers ſhall at any time during the continuance of this co-partnerſhip be hired or entertained by any of the ſaid co-partners into the ſervice of this co-partnerſhip, or be removed or diſplaced therefrom without the conſent of the major part of the ſaid co-partners firſt had and obtained, and that every ſuch ap-

No apprentice to be taken without joint conſent.

If an apprentice be taken, he is to be employed in the joint trade, and the premium received with him added to the capital.

That no clerk or brewer ſhall be hired or removed without joint conſent.

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prentice and clerk to be taken and hired as aforesaid shall give security to the said parties for his and their fidelity and good behaviour during such his apprenticeship or service. But as to the said servants any of the said copartners may place or displace them at her, his or their will or pleasure.

That any of the parties may with consent of the others bring further sum into the business, and be allowed £4. per cent.

AND FURTHER it is agreed that it shall and may be lawful unto and for any of the said parties by and with the consent of the others of them, at any time or times during the said copartnership, to advance and lend, or bring into the said joint stock and trade, any sum or sums of money for the better advancement and carrying on the said joint trade, and at any time or times afterwards to have or take the same or any part thereof out again, giving three months notice in writing to the others of them of the same, and if any of them, shall so lend or advance any such sum or sums of money, the same shall be immediately entered into the cash book of the said copartnership as a debt owing to the party lending the same, and the said capital stock and the profits thereof shall be chargeable with and liable to make good the money so to be by any of them, lent with interest for the same after the rate of £4. per cent. per annum.

That the stock and profits shall not be drawn out or converted to the private use of any of the parties; (except as after mentioned,)

AND MOREOVER that neither of them the said parties shall during this copartnership convert or employ any part of the said joint stock or withdraw or take out of the same any sum or sums of money unto or for

his or their own private uſe, ſave and except the monthly ſums herein after mentioned, but if notwithſtanding this reſtriction, either of the ſaid parties ſhall at any time or times during the ſaid copartnerſhip draw out or withhold any ſum or ſums of money of or belonging to the ſaid joint trade, or ſhall owe or ſtand indebted to the ſaid joint trade or the caſh thereof, that then the party or parties ſo drawing out or withholding any ſum or ſums of money, or owing or ſtanding indebted to the ſaid joint trade in the caſh thereof, ſhall allow and pay to the ſaid joint ſtock intereſt for the ſame after the rate of £5. for every £100. by the year for ſuch time or times as the ſaid money or monies ſhall be due and owing to the ſaid joint trade, and the others of the ſaid parties ſhall be at liberty to deduct ſuch ſum or ſums of money ſo owing, with the intereſt thereof, out of the ſhares of the party or parties ſo owing the ſame, of and in the ſaid capital ſtock at the next general reſt or account. And it is alſo mutually and reciprocally covenanted and agreed, that it ſhall and may be lawful to and for the ſaid copartners, reciprocally to have receive and take monthly and every calendar month during the continuance of this copartnerſhip out of the ſaid joint ſtock and the increaſe, profits, or produce thereof to and for his and their own uſe, the ſeveral ſums of money herein after mentioned (that is to ſay) the ſaid *M. B.* the ſum of

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that they ſhall not ſtand indebted to the trade, &c.

The parties agree to draw out a ſtipulated ſum per month.

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fits thereof, at the next general account to be made up between the ſaid parties after the diſcovery thereof. AND alſo that if any loſs or damage ſhall during this copartnerſhip happen, befall, or come to the ſaid joint ſtock or the profits thereof, or to the ſaid parties hereto, or any of them on account of the ſaid joint trade, by fraud, deceit, wilful negligence, default, or infidelity of any of the parties, or by his, her, or their wilful breach of theſe preſents, that then ſuch partner by and through whom ſuch damage or loſs ſhall happen, ſhall pay, anſwer, and make good the ſame on account of the ſaid joint trade within the ſpace of three months next after the diſcovery thereof, (*a*). AND FURTHER, that each and every of the ſaid parties ſhall and will bring in and pay all ſuch debts and ſums of money as he, ſhe, or they ſhall from time to time during the ſaid copartnerſhip receive on account of the ſaid joint trade into the joint ſtock or caſh of the ſaid copartnerſhip, immediately after the receipt thereof; and that the debts and ſums of money ſo to be received, ſhall from time to time be applied to diſcharge the debts that ſhall or may be due from the ſaid joint trade. AND MOREOVER that neither of the ſaid parties to theſe preſents ſhall be allowed, or paid out of the ſaid joint ſtock, any

If any loſs ſhall happen to the trade by the wilful fault or negligence of any of the parties, ſuch party to be anſwerable.

That all debts received on account of the trade, ſhall be brought into the joint ſtock and the ſame paid in diſcharge of the debts due from the partnerſhip trade.

The parties not to be allowed what they expend upon cuſtomers.

(*a*) See Waugh *v.* Carver, 2 H. Black. Rep. 235.

money expended by her, him, or them, upon or with any cuſtomer, or other perſon or perſons on account of the ſaid joint trade, unleſs the ſame ſhall be claimed and brought to account, and entered in the expence book of the ſaid copartnerſhip within ſeven days next after the expending thereof (*a*). AND IT IS LIKEWISE AGREED, that the ſaid parties ſhall one day in every year during the continuance of the ſaid copartnerſhip, (that is to ſay) on the 24th day of June in every year, or within 14 days next before, or after, join in making up and perfecting in writing, an exact and perfect general reſt or account, eſtimate or calculation, as well of all monies, debts, ſtocks, and effects due, owing or belonging to the ſaid joint trade, or the ſaid parties hereto, or any of them, in reſpect thereof, as alſo of all debts and ſums of money due or owing by or from the ſaid joint trade or copartnerſhip; and alſo of and concerning all loſſes and gains, incident thereto, and that upon the perfecting and adjuſting every ſuch yearly general reſt or account, the ſame ſhall be tranſcribed into five books, whereof each party ſhall have one for her and his own proper uſe, mutually ſubſcribed by all the ſaid parties to theſe preſents, and that in caſe of the death of

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unleſs it is entered in the caſh book, and brought to account.

An account to be made and allowed every year.

In caſe of the

(*a*) See Thornton *v.* Proctor 1. Anſtr. 94.

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any of the said parties during the continuance of the said copartnership, the executors or administrators of such deceased partner shall have his parts and shares in the said stock and gains as so ascertained (*a*); which rests or accounts so stated and subscribed, shall not be at any time afterwards opened, ravelled into, or controverted, except some manifest error shall be found therein, and made to appear in the life time of all the said parties to these presents, or unless such errors shall appear upon the face of such accounts so passed and subscribed as aforesaid, the first of which said general rests or account shall be made up stated and signed on the 24th day of June, next ensuing the date date hereof, or within fourteen days next before or after, and that the clear net profits and gains which shall appear to have arisen by reason or on account of the said joint trade, upon every such yearly casting up, shall yearly be divided between the said parties hereto, in proportion to their said several shares of and in the said copartnership stock herein before mentioned, or the said profits and gains shall be divided, employed and continued for the better increase and carrying on the said joint trade and copartnership, as all the said parties to these presents shall mutually agree upon. AND IT IS ALSO declared,

death of the parties, his executors to have his share as stated in the account to be made.

The account not to be opened unless in the life time of all the parties, or there shall appear an error upon the face of it.

Profits to be divided amongst the parties according to their capital.

(*a*) See post. 117. r. (*a*).

and agreed, that all rent, taxes, repairs, ſervants wages, and damages which ſhall during this copartnerſhip ariſe, befall, or come to the ſaid capital ſtock, employed or to be employed in the ſaid joint trade, or the profits thereof, (except as hereinbefore is particularly mentioned), and all charges and expences attending, the ſame ſhall be borne and ſuſtained by all the ſaid parties hereto, out of the ſaid joint ſtock in the ſhares and proportions herein before mentioned. AND FURTHER that they the ſaid parties to theſe preſents ſhall and will at the expiration or other ſooner determination of this copartnerſhip, or within thirty days next after, meet together and join in making up and perfecting in writing a final account and reſt of all the joint ſtock, money, goods, effects, and other things then belonging to the ſaid joint trade or copartnerſhip, or the ſaid parties hereto on account thereof, and of all debts then due and owing unto and from the ſame, and after paying and ſatisfying, or providing for the payment and ſatisfaction of all the debts that ſhall be then due and owing by and from the ſaid copartnerſhip, or the ſaid parties hereto on account thereof, they the ſaid parties to theſe preſents ſhall and will ſell and diſpoſe of the leaſe of the ſaid brew houſe, and all other leaſes belonging to the ſaid joint trade, and all and every the plants and utenſils belonging to and uſed in the ſaid joint trade,

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All taxes, repairs, wages for ſervants, &c. to be paid out of the joint ſtock.

See ante, 98. 102.

All the parties to join in making a final account at the expiration of the term.

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either by public or private ſale as the ſaid parties ſhall agree, and ſhall make diſtributions, diviſions, aſſignments, and allotments amongſt themſelves of the monies ariſing from the ſale of the ſaid leaſes, and utenſils, and of all the remainder of the ſaid joint ſtock, money, debts, goods, effects, and other things then remaining and belonging to the ſaid copartnerſhip, according to their reſpective ſhares, proportions and intereſts therein. AND in caſe any or either of the ſaid parties ſhall be indebted to any other of the ſaid parties, or unto the ſaid joint ſtock or the caſh thereof, then the ſaid party or parties ſo indebted, ſhall not have liberty to take to herſelf, himſelf, or themſelves reſpectively, her, his or their reſpective ſhares or proportions of any ſuch effects or ſtock in trade, until ſuch debts ſhall be fully paid, ſatisfied and diſcharged. AND that all the books of account, papers and writings which ſhall belong to the ſaid copartnerſhip trade, ſhall be placed and left in the hands of ſuch perſon as ſhall be mutually agreed upon between the ſaid parties, ſo that each and every of the ſaid parties ſhall and may have the uſe and inſpection thereof, and have recourſe and reſort thereto when he, ſhe or they ſhall think fit, and from thence forward none of the ſaid parties, her, his or their executors or adminiſtrators ſhall or will intermeddle with, receive or releaſe any of the debts aſſigned, allotted, or diſtributed

If any of the parties be indebted to the other, it ſhall be deducted out of his ſhare upon the final ſeparation.

That the books of account ſhall be depoſited in the hands of a perſon, to be mutually agreed upon.

to the others or other of them; but that each of the ſaid parties ſhall and will not only then, but from time to time and at all times thereafter, at the requeſt of the others of them, their executors or adminiſtrators, execute and give to each other, his and her executors and adminiſtrators, ſufficient powers and authorities for the recovery and receipt of all debts, ſum and ſums of money, and other effects which ſhall fall or come to his, her, or their reſpective ſhare by ſuch diviſion. COPARTNERSHIP.

AND it is hereby further mutually covenanted and agreed by and between the ſaid parties to theſe preſents, that no right, benefit, or advantage of ſurvivorſhip ſhall be had or taken by either of the ſaid parties to theſe preſents, (*a*) their, her, his or their executors or adminiſtrators any law uſage or cuſtom of ſurvivorſhip to the contrary in any wiſe notwithſtanding; but in caſe any of the ſaid parties ſhall happen to die or become bankrupts during the continuance of this

No right of ſurvivorſhip.

(*a*) A Cauſe againſt ſurvivorſhip is generally inſerted in articles of copartnerſhip, but it ſeems unneceſſary; for it is a maxim of law that *Jus accreſcendi inter mercatores non habet*, a "maxim eſtabliſhed for the benefit of trade and commerce, that the fruits of each perſon's labour and induſtry may deſcend to his children and family" 1 *Vern.* 217. and 1 *Vez.* 34, to which may be added that the grounds of contracts of this nature, are the ſkill which each is ſuppoſed to have in the buſineſs, but the executors of the parties may be of another trade. Hence in caſe either party become bankrupt, the aſſignees will only be tenants in common of an undivided ſhare, ſubject to all the rights of the other parties. Cowp. 449.

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copartnerſhip, the party or parties who ſhall ſurvive ſuch party or parties ſo dying and ſhall not have become bankrupts, ſhall and will within the ſpace of three years then next enſuing the death of ſuch deceaſed partner, or ſuch party becoming bankrupt by three equal payments, well and truly pay or cauſe to be paid to the executors or adminiſtrators of the party or parties ſo dying, or to the aſſignee or aſſignees of the party or parties ſo becoming bankrupt, her, his or their full net part or ſhare of and in the ſaid joint ſtock, according to her, his and their ſhares and proportions thereof, in copartnerſhip, and of the debts and effects thereto belonging, and according to the valuation and appraiſement that ſhall have been made thereof, by the laſt general reſt or account which ſhall have been made up, ſtated, and ſigned by the ſaid parties hereto, next before the death of ſuch deceaſed partner or partners, in caſe any reſt or accounts ſhall have been made up, ſtated and ſigned; but in caſe no ſuch reſt or account ſhall have been made up, ſtated and ſigned, then ſuch net ſum or ſums of money as the party or parties ſo dying or become bankrupt, ſhall have advanced and brought into the ſaid joint trade at the time of ſuch death or bankruptcy, (over and above the ſaid monthly ſums herein before agreed to be taken by them the ſaid parties,) up to the time of his, her, or their deceaſe, together with intereſt for

The ſhare of the party dying or becoming a bankrupt to be paid to his executors or aſſigns,

See ante, 117. n. (a)

together with intereſt.

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ſuch nett part or ſhare from ſuch party or parties deceaſe, or becoming bankrupt after the rate of £5. for £100. by the year, the firſt of the ſaid three payments to begin and be made at the end of one year, next after ſuch deceaſe or bankruptcy, with intereſt as aforeſaid, and the ſaid and laſt payment to be made within three years next after ſuch parties deceaſe or bankruptcy, with intereſt as aforeſaid. AND ALSO that ſuch ſurviving partners or partner ſhall within one month next after the deceaſe or bankruptcy of the others or other of them, enter into and duly execute and deliver to the executors or adminiſtrators, or aſſignee or aſſignees of ſuch deceaſed or bankrupt partner, a bond or obligation in a reaſonable penalty, with condition for ſuch ſurviving or other partners or partner, their, her, or his executors or adminiſtrators, to ſave harmleſs and keep indemnified the executors or adminiſtrators, or aſſignee or aſſignees of the ſaid deceaſed or bankrupt partner from all incumbrances, debts, and demands, coſts, charges, damages, and expences any way ariſing, or to ariſe, from or on account, or by reaſon or means of the ſaid joint trade and copartnerſhip. AND to the intent that the executors or adminiſtrators, or aſſignee or aſſignees reſpectively of the ſaid party or parties ſo dying or becoming bankrupt, may have as little trouble as poſſible, the ſurviving party or parties to theſe preſents ſhall

The ſurviving partner in caſe of the death or bankruptcy of any of them to execute a bond to the executors or aſſigns of the party dying to indemnify them from all actions,

and alſo for payment of his part of the profits and capital of the buſineſs,

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likewiſe within one month next after ſuch partners death or bankruptcy, duly execute and deliver one bond or obligation to the executors or adminiſtrators, or aſſignee or aſſignees, of ſuch deceaſed or bankrupt party, in the penalty of double the ſum that ſhall appear to be due to ſuch deceaſed or bankrupt partner, conditioned for the payment of the clear and nett amount of the part or ſhares of the party or parties ſo firſt dying or becoming bankrupt, of and in the ſaid joint ſtock and effects, according to ſuch reſt and valuation which ſhall have been made and taken as aforeſaid, together with ſuch intereſt as aforeſaid, in ſuch manner and at ſueh times as is herein before mentioned and appointed. Nevertheleſs it is expreſsly agreed upon by and between the ſaid parties to theſe preſents, that in caſe the party or parties ſo dying or becoming bankrupt, ſhall at her, his, or their death or bankruptcy, be indebted to any other of the ſaid parties, or to the ſaid joint ſtock, or the caſh belonging thereto, then the ſurvivor or ſurvivors of them the ſaid parties, ſhall and may have full power and authority in the firſt place to deduct and retain out of ſuch deceaſed or bankrupt party or parties ſhare of and in the ſaid joint ſtock and the profits thereof, ſo much money as will be ſufficient to pay or ſatisfy ſuch debt or debts, and ſuch deductions ſhall be allowed as payment and in ſatisfaction of ſo much of ſuch deceaſed or bank-

but ſhall deduct what is owing to the joint ſtock or to themſelves.

rupt party or parties ſhare of and in the ſaid joint ſtock, and the produce thereof, and that from and after the execution and delivery of ſuch bond, or obligation as aforeſaid, from and by ſuch ſurvivors or ſurvivor, ſuch ſurvivors or ſurvivor ſhall and may have take and enjoy to themſelves, herſelf or himſelf the whole of the ſaid joint ſtock and trade, and the debts and effects thereto belonging, and the executors or adminiſtrators of ſuch deceaſed party or parties, and the aſſignee or aſſignees of ſuch party ſo becoming bankrupt, ſhall not nor will make any claim or pretence to any part or ſhare of or in the ſaid joint ſtock or trade, or the produce thereof, or any debts or effects thereunto belonging, or ariſing therefrom. But, on the contrary, ſhall and will upon every reaſonable requeſt for that purpoſe, aſſign, releaſe, and diſcharge all right, title, intereſt, claim and demand whatſoever, therein or thereto to the ſurvivors or ſurvivor of them the ſaid parties to theſe preſents, and ſhall and will give him, her, or them, full power, authority, and aſſiſtance, for and towards the ſuing for, recovering, and receiving of all or any of the ſaid debt or debts, and for the quiet enjoyment of all or any other effects relating to the parts or ſhares of the deceaſed party or parties, of and in the ſaid joint ſtock, and the produce thereof, by permitting their names to be made uſe of, or by any other lawful ways or means

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After the execution of ſuch bond, he and they to have the whole buſineſs.

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or other inſtruments, whereby the ſaid partnerſhip may be affected, or liable to pay or anſwer any ſum or ſums of money, or goods, for which the ſaid joint ſtock ſhall not have received a valuable conſideration, the party ſo making, ſigning, accepting, or executing the ſame, ſhall forthwith forfeit and pay to the others of them, for every ſuch bond, bill, note, or other inſtrument, as much money as every ſuch bond, bill of exchange, note, or inſtrument, ſhall be made for payment of. AND in ſuch caſe alſo, the parties to whom ſuch forfeitures ſhall be due, ſhall thenceforth have power, by writing under their hands and ſeal, to diſſolve this copartnerſhip, and the ſame ſhall from the date and delivery of ſuch inſtrument of diſſolution, ſtand abſolutely diſſolved as if the ſame deed of diſſolution had been executed by all the ſaid parties, or as if the ſaid term of 12 years had been completely elapſed or expired, any thing hereinbefore contained to the contrary notwithſtanding. AND IT IS HEREBY FURTHER AGREED and declared, by and between the ſaid parties hereto, and it is the true intent and meaning of them, and of theſe preſents, that in caſe the ſaid *I. C.* ſhall be minded and deſirous to quit and leave this preſent copartnerſhip at the end of the firſt ſeven years of the ſaid term of 12 years, and ſhall give his then partners or partner at leaſt ſix months notice, in writing,

And the other partners ſhall have power to diſſolve the partnerſhip.

It ſhall be lawful for I. C. to quit the partnerſhip on giving notice.

immediately preceding the ſaid firſt ſeven years, or ſhall leave the ſame at the compting houſe of the ſaid copartnerſhip, of ſuch his deſire and intention, that then, and in caſe of ſuch notice, ſo to be given, or left as aforeſaid, this preſent indenture of copartnerſhip, and every covenant, clauſe, matter, article, and thing herein contained, ſhall ceaſe, determine, and be abſolutely void as to him the ſaid *I. C.* at the end of the ſaid firſt ſeven years, in the ſame manner, to all intents and purpoſes, as if the ſaid *I. C.* had died at the end of ſuch firſt ſeven years, and in ſuch caſe the others or other of the ſaid partners or party, within three years next after the end of the ſaid ſeven years, ſhall and will well and truly pay, out of the ſaid joint eſtate, and in proportion to their reſpective intereſt therein, to the ſaid *I. C.* his executors or adminiſtrators, his full nett part and ſhare of and in the ſaid joint ſtock and effects, according to the reſt to be made up and taken at the end of the ſaid firſt ſeven years, by three equal payments, together with intereſt from ſuch reſt, after the rate of £5 per cent. at ſuch times as the parts and ſhares of any party dying, or becoming bankrupt, is hereinbefore directed to be paid, and ſhall alſo execute and deliver bonds to the ſaid *I. C.* his executors and adminiſtrators, to indemnify him and them from all debts and demands due and ariſing from the ſaid trade, and

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in which caſe the other partner to give bond for payment of his ſhare, &c.

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for payment of the part and ſhare of the ſaid *I. C.* of and in the ſaid joint ſtock and effects, with intereſt as aforeſaid, at ſuch times, and in ſuch manner as is hereinbefore directed in caſe of the death or bankruptcy of either of the ſaid parties, (*a*). PROVIDED ALWAYS, that in caſe the ſaid *I. C.* ſhall at the end of the ſaid ſeven years be indebted unto any other of the ſaid parties, or to the ſaid joint ſtock, or to the caſh thereof, then the others or other of the ſaid parties ſhall have full power to deduct out of the part and ſhare of the ſaid *I. C.* of and in the ſaid joint ſtock and effects, ſuch ſum or ſums of money ſo owing from the ſaid *I. C.* AND the ſaid *I. C.* doth hereby for himſelf, his executors, and adminiſtrators, covenant, promiſe, and agree, to and with the others of the ſaid parties to theſe preſents, that from and after the execution and delivery of ſuch bonds, the others or other of the ſaid parties ſhall and may take to themſelves, herſelf, or himſelf, the whole of the ſaid joint trade, and the debts and

That in caſe the ſaid I. C. at the end of 7 years be indebted unto any other of the ſaid parties, or to the ſaid joint ſtock, &c. it ſhall deducted out of the ſhare of ſaid I. C. in the joint ſtock and effects.

Covenant from I. C. that on executing the bond to him after he ſhall quit the buſineſs, the other parties may enjoy his ſhare, and that he will do any act. &c.

(*a*) Notwithſtanding a diſſolution of the copartnerſhip, the remaining party will continue liable for all engagements entered into jointly with his companion during the exiſtence of the copartnerſhip, even though notice be publicly given to the creditors of the diſſolution, and that the continuing party was to be anſwerable for their demands, for notice is only "*res inter alia acta*," and not binding upon third perſons, and changing the intereſt cannot alter the ſecurities. Heath *v.* Percival. 1 *P. Wms.* 682. Smith *v.* Jameſon. 6 *Term Rep.* 601.

effects thereto belonging, without any hindrance, claim, or demand, of or by him the ſaid *I. C.* his executors or adminiſtrators, and that he the ſaid *I. C.* his executors or adminiſtrators, ſhall and will, upon every reaſonable requeſt, aſſign, releaſe, and diſcharge all right, title, intereſt, claim, and demand therein or thereto, to the others or other of the ſaid parties, at their coſts and charges, and give them, her, or him, full power, authority, and aſſiſtance, for and towards the ſuing for recovery, and receiving of all or any of the ſaid debt or debts, and for the quiet enjoyment of all other the effects relating to the parts and ſhares of the ſaid *I. C.* of and in the ſaid joint ſtock, and the profits thereof AND MOREOVER it is agreed, that in caſe any diſpute or difference (*a*) ſhall ariſe or happen between the ſaid parties to theſe preſents, their reſpective executors or adminiſtrators, during the continuance of this copartnerſhip, or at the end thereof, for or in reſpect of any matters or things relating to or concerning the ſaid joint trade or copartnerſhip (*c*), that the ſame ſhall be referred and ſubmitted to the

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If any diſpute ariſe, to be left to arbitration.

(*a*) See Ravee *v.* Farmer. 4 *Durn. & E. Rep.* 146. Banfill *v.* Leigh. 8 *ibid.* 571.—Under theſe words it has been held, that the arbitrators may award a diſſolution of the copartnerſhip. Green *v.* Waring. 1 *Bl. Rep.* 475.

(*b*) As to what may be the ſubject of a ſubmiſſion to arbitration, ſee *Kyd. Aw.* 31. and 1 *Bac. Ab.* 8vo. 202. It is clearly

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decision, final end, and determination of five indifferent persons, as arbitrators, whereof each party to choose one. And the said parties to these presents do oblige and bind themselves, their heirs, executors, and administrators, severally and respectively, unto the others and other of them, and their, her, and his executors or administrators, in the penalty or sum of £2000, that they, their executors or administrators, shall and will abide by, stand, and agree to the award * and determination of the said five arbitrators, (*b*) or

The parties bind themselves to each other to obey the award of the arbitrators.

* See 3 Term Rep. 138. as to award of *costs*.

agreed, that all chattels personal, and personal actions, may be determinable by arbitration, and the right transferred by naked award, for these are traversable by the party himself, without any solemnity, and whatever the parties themselves can do, may be done by the arbitrators, who are their substitutes, and stand in their place. *Petyo's Case*, 9 *Co.* 78. But where the right of freehold is in debate, the property cannot be transferred by an award, because the parties cannot pass corporeal inheritance without solemn livery; "yet, doubtless," says Sir *W. Blackstone*, "an arbitrator may now award a conveyance or release of land, and it will be a breach of the arbitration bond to refuse compliance. 3 *Blac. Com.* 16, and see *Kyd. Aw.* 34.

(*b*) See Sanways *v.* Eldsley. 2 *Mod.* 73. Originally the submission to arbitration used to be by word or by deed, but both of these being revocable in their nature, it is now become the practice to enter into mutual bonds with condition to stand to the award or arbitration of the arbitrators, or umpires therein named. 3 *Blac. Com.* 16. But the submission may be by indenture with mutual covenants at law. See Sanways *v.* Eldsley, 2 *Mod.* 73. And though such

the major part of them, (*a*) ſo that the ſaid five arbitrators, or the major part of them, do make their award, in writing, under their hands and ſeals, (*b*) ready to be delivered to the ſaid parties within 40 days after ſuch reference (*c*). AND it is alſo agreed by and between the ſaid parties, that after the ſaid arbitrators ſhall be ſo nominated and appointed as aforeſaid, the ſubmiſſion of the ſaid parties to the award ſo to be made as aforeſaid, ſhall be made a rule of his Majeſty's Court of *King's Bench*, at *Weſtminſter*, purſuant to a late act of parliament made in that behalf, if the ſaid court ſhall think fit (*d*). AND LASTLY, for

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And the award to be made a rule of court.

For the true

a ſubmiſſion be revocable, yet as it cannot be revoked but by the mutual conſent of both parties. 8 co. 80. *b*. And an action would lie for breach of covenant. See *Keb.* 10. 20. *Sid.* 281. and where a penalty is ſuperadded on non-peformance of any covenant, clauſe, &c. contained in the articles, which equally extends to the covenant for ſubmiſſion, as to the reſt of the deed, the ſecurity ſeems nearly equal to the mode alluded to of mutual bonds.

(*a*) See *Vent.* 50. 2 *Keb.* 57. 3. *Bulſt.* 62. 68.

(*b*) Theſe circumſtances muſt be nicely obſerved. *Bulſt.* 110. *Dy.* 243. 1 *Stra.* 116. 2. *Mod.* 77.

(*c*) See 8 *Co.* 98. *Keb.* 49. 1 *Bur.* 274.

(*d*) See 9 and 10. *W.* 3. *c.* 15, and 2 *Bur.* 704, and for caſes on the conſtruction of this ſtat. See 1 *Bac. Ab.* 8vo. 205. 3 *Blac. Com.* 17.

As the parties concur to give to the arbitrators the power of examining witneſſes upon oath, See Halfhide *v.* Fenning. 2 *Brow. Ch. Rep.* 336, without which the merits of the queſtion before them will often remain dubious. This

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the true performance of all and every the clauſes, covenants, articles, and agreements herein contained, each of the ſaid parties bindeth herſelf and himſelf ſeverally, and her and his ſeveral heirs, executors, and adminiſtrators, unto the others and other of the ſaid parties, her and his executors and adminiſtrators, in the penalty or ſum of ——— of lawful money of Great Britain. In Witneſs, &c.

performance of the above articles, the parties bind themſelves in a penalty.

An Agreement of COPARTNERSHIP *by Indenture, between two Merchants and General Traders.*

THIS INDENTURE made the — day of ——— in the 37th year of the reign of our Sovereign Lord George the Third, by the Grace of God, of *Great Britain, France, and Ireland,* King, Defender of the Faith, and ſo forth, and in the year of our Lord Chriſt 1797, BETWEEN *Giles Van Tromp,* of *Great Yarmouth,* in the County of *Norfolk,* (*Merchant and Trader*) of the one part, and *Michael James,* of the ſame place (*Merchant alſo and Trader*) of the other part. Whereas the ſaid *Giles Van Tromp* and *Michael James,* have for many years paſt ref-

Recital of agreement for Copartnerſhip.

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clauſe for making the ſubmiſſion a rule of Court, is extremely uſeful; not only becauſe a non-performance of the award will in ſuch caſe be a contempt of court, but as affording the parties, through the medium of the Court, an opportunity of procuring the witneſſes to be ſworn.

pectively carried on the said Trades or Businesses of (— *and* ———), and have also been respectively employed by themselves or their agents in the manufacture, purchase, sale, and exchange of divers articles of merchandise used in the Construction of Ships and other vessels. And Whereas the said *G. V. T. & M. J.* in order to extend their respective interests and connections in the said several concerns have mutually agreed to become Copartners therein during such period, and under such terms and conditions as hereinafter are mentioned. NOW THIS INDENTURE WITNESSETH, That in pursuance of the aforesaid agreement, and for the better effectuating the intentions of the said parties in respect thereof, (*a*) They, the said *Giles Van Tromp* and *Michael James*, have covenanted, promised, and agreed, and by these presents do for themselves severally and respectively, and for their several and respective heirs, executors, administrators, and assigns, covenant, promise, and agree to and with each other, and the heirs, executors, administrators, and assigns of each other, that they, the said *G. V. Tromp* and *M. James*, have become, and do hereby become, Copartners, joint Traders and Dealers under the name and firm of *Tromp & James* in

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Agreement of Copartnership.

(*a*) No pecuniary or other valuable consideration is necessary.

COPARTNERSHIP. the ſeveral Trades or Buſineſſes of (— & ———— ————) and in the manufacture, purchaſe, ſale, and exchange of all and every of the goods, wares, commodities, and articles of merchandiſe whatſoever, in which they or either of them, by themſelves or himſelf, or by their or his reſpective agents or agent, do, does, or are, or is accuſtomed at the time of perfecting theſe preſents, or in which at any time during the legal exiſtence hereof, they ſhall mutually agree, or be accuſtomed to trade or deal; they, the ſaid parties, equally ſharing and ſuſtaining the produce, profits, and loſſes attending the ſame; which ſaid Copartnerſhip and agreements ſhall exiſt and continue during the term or period of

for ſeven years determinable. 7 years, to commence on and be computed from the — day of ———— now next-enſuing: (ſubject nevertheleſs to the proviſo and proviſos, clauſe and clauſes, hereinafter expreſſed for the diſſolution or variation thereof.) And for the more orderly and convenient management of the ſaid joint concerns, and to prevent as far as may be any miſunderſtanding between the ſaid parties in conducting the ſame, they, the ſaid *G. V. Tromp* and *M. James* do hereby for themſelves ſeverally and reſpectively, and for their ſeveral and reſpective heirs, executors, and adminiſtrators, further covenant, promiſe, and agree to and with each other, and the executors, adminiſtrators, and aſſigns of each other, in manner following; (that

Covenant for induſtry and fidelity of the parties.

is to ſay), That they, the ſaid (*G. V. Tromp* and *M. James*) and each of them ſhall and will at all times during the continuance of the preſent Copartnerſhip, ſedulouſly and zealouſly employ themſelves and himſelf, together and apart, in and about, and for the increaſe and improvement of the buſineſs and affairs of the ſaid joint concerns, to the beſt of their reſpective abilities, knowledge, and judgment, and alſo ſhall and will, during the period aforeſaid, be juſt and faithful to each other in and concerning all bargains, contracts, purchaſes, ſales, receipts, payments, accounts, matters, and things whatever, by them, and tranſacted by them, or either of them, their or either of their clerks and agents, at any time made, entered into, ſettled, tranſacted, and done, relative to the ſaid Copartnerſhip, or the effects thereof. And further, that neither of the ſaid parties ſhall nor will, either of them, with his own proper money, credit, or means, not belonging to the ſaid Copartnerſhip, directly or indirectly, buy, ſell, or exchange, or manufacture, or agree, or contract, or become engaged to, purchaſe, ſell, exchange, or manufacture, or in any manner barter with, or deal, or trade in, any of the goods, wares, commodities, or articles of merchandiſe, in which they, the ſaid parties, have, by theſe preſents, agreed, or ſhall at any time or times during the continuance of the ſaid Copartnerſhip, agree to

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COPARTNERSHIP. trade or deal otherwiſe than for the increaſe or advantage of the ſaid joint trade and concerns, and on account of the ſaid Copartnerſhip; nor ſhall either of the ſaid parties, even on account and for the benefit of the ſaid joint trade, buy, ſell, manufacture, deal, or trade in, or contract, or become engaged to buy, ſell, manufacture, deal, or trade in, any goods, wares, commodities, or articles of merchandiſe, other than ſuch and the like goods, wares, commodities, and articles of merchandiſe, as they, the ſaid parties, or one of them, at the time of entering into theſe preſent articles of Copartnerſhip, were, was, are, or is, accuſtomed openly and avowedly to manufacture, deal in, and trade, without the expreſs conſent of the other of them firſt obtained in writing for that purpoſe.

Place for conducting the buſineſs. And it is further agreed by and between the ſaid parties, that the buſineſs and concerns of the ſaid Copartnerſhip ſhall, during the continuation thereof, be managed and conducted at *Great Yarmouth*, aforeſaid, at, in, and upon, the place, and places, houſes, offices, and premiſes, where the buſineſs of the ſaid *G. V. Tromp* are now carried on, unleſs ſome other place or places, ſhall, during the time aforeſaid, be mutually agreed upon and taken by the ſaid parties for that purpoſe; and the rent and rents, ſum and ſums of money reſerved, or from time to time becoming due and payable for, or in reſpect of all or any of the houſes, warehouſes, offices,

buildings, places, and premiſes therein, or where- COPART-
upon the concerns of the ſaid Copartnerſhip, or NERSHIP.
any of them are, is, or ſhall be managed or conducted, or which are, is, or ſhall be at any time uſed for the purpoſes or advantage of the ſaid joint trade, together with all and all manner of taxes, rates, aſſeſſments, and duties, parliamentary, parochial, and other, paid or payable, for, or in reſpect of all and every ſuch houſes, warehouſes, offices, buildings, places, and premiſes, as well as all monies, charges and expences, to be at any time incurred by and with the conſent of both the ſaid parties, either in inſuring the ſame from fire or other accident, or for the neceſſary repairs and improvements thereof; and likewiſe all loſſes and abatements which ſhall happen to the ſaid joint ſtock and trade, or to the gains and proceeds thereof, by bad and irrecoverable debts, (ſuch only excepted as ſhall be incurred by the negligence or wilful default of one only of the ſaid parties) loſſes, damages, and decays, of goods, ſuits at law and in equity (ſo that the ſame be commenced or defended by the mutual conſent of both the ſaid parties) and all other caſualties whatſoever, together with all wages, ſalaries, allowances, and gratuities, to clerks, ſervants, and workmen, charges and expences of books and letters, and all other neceſſary and unavoidable expences which may be incident to, or be oc-

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caſioned or happen in or about the management of the ſaid joint trade, or otherwiſe in reſpect thereof, ſhall from the ſaid twenty-fifth day of March laſt, be borne, paid, and defrayed by and out of the ſaid joint ſtock, and the increaſe and growing produce thereof in equal parts and proportions.

Ledgers to be kept.

AND it is hereby covenanted and agreed by and between the ſaid parties, that for the better perceiving at all times the true ſtate of the ſaid joint trade, there ſhall be provided and keep all proper and convenient ledgers, books and papers, for the purpoſe of their being written and kept, and wherein there ſhall from time to time be fairly written, and kept juſt and true accounts and particulars of all monies which ſhall be received and paid, and of all goods, wares, manufactures and commodities, bought, ſold, or contracted for, brought, taken in, or delivered out, by either of them the ſaid parties, their ſervants, clerks, or agents, on account of the ſaid joint trade, and the rates and prices at which the ſame were bought and ſold, or contracted for, and all debts contracted, credits given, and of all other matters, tranſactions and things relating to, or in any way concerning the ſaid joint trade and copartnerſhip, and that ſuch ledgers, books and papers, together with all bills, notes, ſecurities for money, letters, orders, and other writings relative to the ſaid joint trade, ſhall at all times be and re-

main open and expoſed to the free acceſs and inſpection of both the ſaid parties, who ſhall have free and unreſtrained liberty and power, as well during the continuance of this copartnerſhip, as at all ſeaſonable times within the ſpace of ſix months from the expiration thereof, to tranſcribe and copy out the ſame, or any of them, at his and their free will and pleaſure, either by themſelves or their reſpective clerks or agents. COPARTNERSHIP.

AND FURTHER, that neither of the ſaid parties ſhall, nor will either of them, lend, or give credit for any ſum or ſums of money whatſoever, or ſell, or contract to ſell, or deliver by way of truſt or credit, or cauſe or direct to be ſold or delivered, any goods wares, commodities or merchandiſe, being part of or belonging to the ſaid joint ſtock or trade, exceeding the value of ——— to any perſon or perſons whomſoever, without the conſent of the other of the ſaid parties, in writing firſt obtained for that purpoſe, nor ſell, contract to ſell, or deliver in manner aforeſaid, any ſuch goods, wares, commodities, or merchandiſe whatſoever, however ſmall the value or price thereof may be, to any perſon or perſons whomſoever, which the other of the ſaid parties ſhall previouſly have forbidden in writing, to be credited or truſted. AND further, that in caſe either of the ſaid parties ſhall ſell, or contract to ſell, or deliver, by way of truſt or credit, any Parties not to give credit without each other's conſent.

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of the joint ſtock, goods, wares, commodities, or merchandiſe of the ſaid copartnerſhip, contrary to the ſtipulations aforeſaid, the debt and debts thereby created or occaſioned ſhall be charged in the books of the ſaid copartnerſhip, to the credit of the party ſo ſelling, or delivering, or cauſing to be ſold, or delivered the ſaid goods, or commodities, and paid or accounted for out of his own ſeparate and proper eſtate, on or before the next day of ſettling, which ſhall thereafter occur, between the ſaid parties, in reſpect of the ſaid joint ſhare. AND further, that neither of the ſaid parties ſhall without the conſent in writing of the other of them, firſt obtained for that purpoſe, releaſe, or compound for any ſum of money, debt, ſecurity, or duty, due or belonging to the eſtate of the ſaid copartnerſhip, nor ſign any bankrupt's certificate, letter of licence, or other inſtrument in writing whatſoever, whereby any ſuch ſum of money, debt, ſecurity, or duty, ſhall be in any wiſe diſcharged, vacated, or diminiſhed, until the ſame ſhall have been abſolutely, and bona fide fully paid and ſatisfied, and that each or the ſaid parties ſhall anſwer, and pay, or otherwiſe make good out of his own ſeparate and particular eſtate and effects unto the ſtock of the ſaid copartnerſhip, all loſſes and deficiencies which may happen thereunto, by reaſon of any ſuch monies, ſecurities, debts, or duties being ſo by him or

Neither party to releaſe debts, &c.

his order or direction, releaſed, compounded for, or diminiſhed as aforeſaid. And moreover that neither of the ſaid parties ſhall without ſuch conſent as aforeſaid, give, or enter into any bond, judgment, warrant of attorney, or ſtatute, or in any other way or manner howſoever, become bound or charged as bail, ſurety, or ſecurity, with or for any perſon or perſons whomſoever, or give, draw, accept, ſign, or execute any bond, bill of exchange, promiſſory note, agreement, contract, or other writing whatſoever, for the ſecurity or payment of any ſum or ſums of money, nor do or wilfully ſuffer to be done, any other act or thing whatſoever, whereby the ſaid joint ſtock and trade, or the monies, debts, goods, or effects thereof, ſhall or can be made ſubject or liable to pay or anſwer any ſum or ſums of money, or perform any duty for which the ſaid joint ſtock ſhall not have received a good and valuable conſideration, and if either of the ſaid parties ſhall ſo become bail or ſurety, or ſhall ſo make, give, draw, accept, ſign, or execute any ſuch bill, note, or other inſtrument in writing aforeſaid, ſuch party ſhall forthwith forfeit and pay to the other of them, his executors, adminiſtrators or aſſigns, ſuch and an equal ſum or equal ſums of money as that and thoſe for the payment or ſecurity of which ſuch ſurety, or inſtrument in writing was entered into or given, or which by reaſon

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Nor become ſurety, &c.

nor give bonds, bills, &c.

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thereof, the ſaid joint ſtock, or the parties hereto, may or might in any manner, caſualty or event, become liable to pay or anſwer, or otherwiſe be incumbered or prejudiced. AND further, that the party to whom ſuch payment or forfeiture ſhall become due, ſhall thenceforth be at liberty, and have full power by any deed or writing to be by him ſigned and ſealed in the preſence of two or more credible witneſſes to diſſolve and make void the copartnerſhip hereby created or evidenced, and the ſame ſhall from and immediately after the date or other time of ſigning and ſealing ſuch deed or writing, be abſolutely diſſolved, annulled, and determined as effectually, and in like manner, as if both the ſaid parties had agreed to diſſolve the ſame, and have ſigned, ſealed, and executed a valid and proper inſtrument in writing for that purpoſe, or as if the ſaid term of ſeven years hereby limited for the duration of the ſaid copartnerſhip had completely elapſed and expired.

Parties to account annually.

AND further, the ſaid parties ſhall and will in every year during the continuance of this copartnerſhip, on the fifth day of January, or within the ſpace of three months next thereafter, (unleſs prevented by ſickneſs or other unavoidable accident) ſettle and account together, reſpecting the profits and loſs of the ſaid joint ſtock and trade, and all other matters and things relating thereto, for which purpoſe there ſhall be fairly drawn out

and prepared for the inſpection of each of the ſaid parties, a full, true, and particular account in writing of all dealings and tranſactions which ſhall have occurred, been had or entered into by either of the ſaid parties, touching the concerns of the ſaid copartnerſhip, at any time ſubſequent to the —— day of —— in the laſt preceding year, and prior to the —— day of —— in the then preſent year, together with like accounts and particulars of all monies, credits, and duties, due and owing, or outſtanding, to, from, or in reſpect of the ſaid joint trade, or which do, ſhall, or may in any manner, concern or affect the ſame, ſo as that the real ſtate and condition of the ſaid joint ſtock and trade, may in all things fully and clearly appear, and ſuch accounts reſpectively when approved and ſettled by the ſaid parties, ſhall be fairly entered in a book or books adapted to that purpoſe, in ſuch form and manner as is cuſtomary amongſt merchants and general traders; and when ſo entered, the ſame ſhall be ſubſcribed by them reſpectively, as a teſtimony of their reſpective approbations thereof, and ſhall at all times thereafter during the ſubſiſtence of the ſaid copartnerſhip, be kept in ſome ſecure part of the principal compting houſe or other convenient place, to be agreed upon by the ſaid parties, for their common uſe and benefit, and to be by them ſeverally peruſed, copied, or in any other manner had recourſe to

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as there may be occaſion. And of ſuch yearly amount there ſhall, moreover, be drawn up an abſtract or ſummary, (containing the general heads, with the reſts or balances thereof,) which ſhall be fairly written in or upon two ſeparate books or papers, (each being a faithful tranſcript or copy of the other,) and be by them ſeverally ſubſcribed, in the preſence of two credible witneſſes, who ſhall reſpectively ſign an atteſtation thereof. And when the ſaid ſummaries or abſtracts ſhall be ſo ſubſcribed and atteſted, one thereof ſhall be delivered to and retained by each of the ſaid parties, for his own ſeparate uſe. And upon ſettling the ſaid yearly accounts, the ſaid parties ſhall proceed to make ſuch dividends of the net produce of the ſaid joint trade, as ſhall be by them mutually agreed upon as moſt beneficial to the affairs of the ſaid copartnerſhip, each of the ſaid parties taking and retaining an equal moiety or half part thereof to his own proper uſe and benefit. And it is hereby farther mutually covenanted and agreed, by and between the ſaid parties, that upon the determination of this copartnerſhip, whether the ſame take place at, before, or after the completion of the ſaid term of 7 years hereinbefore proviſionally limited for the expiration thereof, they the ſaid parties, their executors or adminiſtrators, ſhall and will, within the ſpace of 30 days then next following, unleſs

Yearly dividends to be made.

Final accounts at the end of the Copartnerſhip.

prevented by illneſs or other accident, and if ſo prevented, then as ſoon thereafter as circumſtances will permit, meet and account together concerning the ſaid joint ſtock and trade, as well reſpecting all profits and loſſes, debts, goods, and effects, then due, owing, or belonging to or from the ſame or the ſaid parties, or either of them, in reſpect thereof, as all other matters and things appertaining thereto not previouſly ſettled and finally adjuſted, and upon ſuch accounts being fully ſtated, aſcertained, adjuſted, and agreed to, by and between the ſaid parties reſpectively, that all and every the net proceeds, gains, or produce of the ſaid joint ſtock and trade, (after deducting debts and duties due from or chargeable thereupon,) ſhall be divided into two equal parts or portions, one part or portion whereof ſhall belong to and be had and received by the ſaid ——, his executors, adminiſtrators, and aſſigns, and the other remaining part or portion ſhall belong to, and be had and received by ——, his executors, miniſtrators, and aſſigns, as his and their own proper monies and effects reſpectively; and if at the time of ſettling ſuch accounts by and between the ſaid parties, there ſhall be any monies, debts, goods, or effects, due and owing to the ſaid joint ſtock or trade, or to the ſaid parties, or either of them, in reſpect thereof, they the ſaid parties, and each of them, ſhall forthwith uſe their and his

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beſt endeavours to collect and get in the ſame; and ſhall and will, on the firſt day of every month then next following ſucceſſively, (until the whole of ſuch debts and effects ſhall have been collected and received, or otherwiſe abandoned as irrecoverable,) account with each other, his executors, adminiſtrators, and aſſigns, in reſpect of the debts and effects of the ſaid copartnerſhip, which they ſhall reſpectively have gotten in and received during the month next preceding, and part and divide the ſame, (after deducting all reaſonable charges and expences attending the recovery and receipt thereof,) between them the ſaid parties, their executors, adminiſtrators, or aſſigns, in ſuch equal ſhares and proportions as aforeſaid, to be by them reſpectively retained and enjoyed as their proper goods, monies, and effects. AND further, that in caſe of the deceaſe of either of the ſaid parties before the full expiration of the ſaid term of 7 years hereinbefore limited for the duration of this copartnerſhip, a true and particular inventory or account ſhall be made and taken as ſoon as may be thereafter, of the ſtock in trade, goods, materials, and manufactures, belonging to the ſaid copartnerſhip at the time of the deceaſe of the party ſo dying, which ſhall be accepted and kept by the party ſurviving, at the prime or original coſt or price at which the ſame were reſpectively purchaſed by the ſaid parties, and a moity or half

Proviſion in caſe of death of either party.

part of the ſum which the ſaid ſtock, goods, and effects ſhall have ſo originally coſt, together with lawful intereſt for the ſame, ſhall be paid by the party ſurviving, his executors, adminiſtrators, or aſſigns, unto the executors, adminiſtrators, or aſſigns, of the party ſo dying, at the times and in the manner following, that is to ſay, one fourth part of the ſaid ſum, with intereſt for the ſame after the rate of £5 per cent. per annum for every £100 thereof, at the end of three calendar months next after the deceaſe of the party ſo dying; one other fourth part of the ſaid ſum, with intereſt after the rate aforeſaid, at the end of ſix calendar months next after the deceaſe of the party ſo dying; one other fourth part, with intereſt as aforeſaid, at the end of nine next calendar months after ſuch deceaſe; and the remaining fourth part of the ſaid ſum, with ſuch intereſt as aforeſaid, at the end of 12 calendar months next after ſuch deceaſe; and for the better ſecuring the payment of the ſaid ſum, with intereſt after the manner aforeſaid, the ſaid ſurviving party ſhall, within one month after the deceaſe of the party ſo dying, bind himſelf, his heirs, executors, and adminiſtrators, in a good and valuable bond or obligation, in writing, for the true and punctual payment of the ſame, with intereſt, unto the executors, adminiſtrators, and aſſigns, of the party ſo dying, at the times and in the manner hereinbefore for that purpoſe mentioned, and ſhall alſo in like manner become

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bound to ſave harmleſs, and keep indemnified, the heirs, executors, and adminiſtrators, of the party ſo dying, and the lands and tenements, goods and chattels, of him the ſaid party deceaſed, from and againſt all debts, rents, taxes, and other duties, which at the time of ſuch deceaſe were jointly owing by both the ſaid parties to any perſon or perſons, by reaſon of the ſaid joint trade, and from and againſt all actions, ſuits, coſts, expences, and prejudice, in reſpect thereof, which ſaid debts, rents, taxes, and duties, ſhall be paid, diſcharged, and ſatisfied, by the ſaid ſurviving party, his executors, adminiſtrators, or aſſigns, out of his own proper and ſeparate eſtate and effects; and the ſaid ſurviving party, his executors and adminiſtrators, ſhall and will get in, recover, and receive, as ſoon as may be after the deceaſe of the party dying, all debts and ſums of money due or owing to the ſaid joint ſtock and trade, or the ſaid parties, or either of them, in reſpect thereof, at the time of ſuch deceaſe, and when, and as the ſame or any part thereof ſhall be ſo recovered, gotten in, and received, ſhall and will pay over one moiety or half part thereof unto the executors, adminiſtrators, or aſſigns, of the party ſo dying; and alſo ſhall and will at every ſuch payment, or oftener if required by ſuch executors, adminiſtrators, or aſſigns, any or either of them, make out and deliver unto him or them a juſt and true account, in writing, of all ſuch

debts and monies as ſhall be then outſtanding and unreceived. And the ſaid executors, adminiſtrators, and aſſigns, of the party ſo dying as aforeſaid, ſhall, on receiving any ſuch debts or monies as aforeſaid, give unto the ſaid ſurviving party, his executors, adminiſtrators, or aſſigns, ſuch good and ſufficient diſcharges, in writing, as in ſuch caſes is uſual and cuſtomary; and upon the whole of ſuch outſtanding debts and monies having been gotten in and received by the ſaid party, his executors or adminiſtrators, (or by him or them relinquiſhed and abandoned as deſperate and irrecoverable,) and a moiety or half part thereof being duly paid over unto the executors adminiſtrators or aſſigns, of the ſaid party deceaſed, the ſaid laſt mentioned executors, adminiſtrators, or aſſigns, ſhall and will forthwith ſign, ſeal, and deliver unto the ſaid party ſurviving, his executors or adminiſtrators, a good, valid, and effectual releaſe and diſcharge, in writing, of and from all claims, and demands whatſoever, which they the ſaid executors, adminiſtrators, or aſſigns of the ſaid party ſo dying, may then have, or theretofore had in, to, and upon the ſaid joint ſtock and trade; or the ſaid party ſurviving, his executors or adminiſtrators, in reſpect thereof, (ſave only in regard to ſuch outſtanding debts and monies as may by the ſaid ſurviving party, his executors or adminiſtrators, have been relinquiſhed as afore- COPARTNERSHIP.

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said, when and as the same may actually be gotten and received, Provided always, nevertheless, and it is hereby covenanted and agreed, by and between the said parties, that in case the party so dying as aforesaid before the expiration of the said term of 7 years, shall leave a widow, or a child or children, him surviving, then the said party so surviving shall and will, during the life and lives of such widow, child, or children, and the life of the survivor of them, or during all the remainder which shall be then to come of the said term of 7 years, which ever shall first determine, well and truly pay, or cause to be paid, unto the said widow, child, or children, the yearly sum of ———, of lawful money of Great Britain, by four equal quarterly payments, in such shares and proportions respectively, or to such one of them only, or such other person or persons, for his or their use, as the party so dying shall by his last will and testament have directed or appointed in that behalf. And in case the said party so dying shall have made or given no such direction or appointment, then the whole of such yearly sum shall be paid unto the widow of the said party deceased. *(Instead of the preceding covenant, in case of the decease of either party before the end of the term, may be inserted the following, if agreeable to the intent of the parties.)* PROVIDED always, and it is hereby covenanted, declared, and agreed, by and between

If either party die, an annuity to be paid to his widow, &c.

the ſaid parties, that in caſe of the deceaſe of either of them before the expiration of the ſaid term of ſeven years hereinbefore limited for the duration of the ſaid copartnerſhip, the executors or adminiſtrators of the party ſo dying, ſhall and may, during the term of one year, to be computed from the day of the deceaſe of the party ſo dying, have, hold, poſſeſs, and enjoy, in copartnerſhip with the party ſurviving, all and every the part, ſhare, right, and intereſt, which the party deceaſed had and enjoyed whilſt living, of and in the ſaid joint ſtock and trade, and the profits, gains, and produce thereof, and of and in all and ſingular the monies, goods, chattels, credits, wares, commodities, articles of merchandiſe, and other matters and things whatſoever, which at the time of ſuch deceaſe ſhall be in or belonging thereto, and together with ſuch ſurviving party ſhall direct, manage, and carry on the ſame, and all matters, things, and concerns, incident or belonging to the ſaid joint trade, in as full, abſolute, ample, and beneficial a manner, to all intents and purpoſes as his teſtator or inteſtate might or could, by virtue of theſe preſents or otherwiſe, have held, poſſeſſed, or enjoyed the ſame if living, and under, ſubject, and liable to ſuch, and the ſame powers, authorities, limitations, reſtrictions, proviſos, clauſes, and agreements, as ſuch teſtator or inteſtate would, if living, have been under, ſubject, or liable to.

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if either party die before the end of the term, his executors, &c. ſhall become copartners for one year.

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Proviſo for returning part of premium advanced, in caſe of the death of admitted partner.

PROVIDED ALWAYS, and it is hereby covenanted, declared, and agreed, by and between the ſaid parties, to be the true intent and meaning of them and of theſe preſents, that in caſe the ſaid ——— ſhall depart this life at any time within the period of —— years to be computed from the 25th day of *March* laſt paſt, the ſaid ——— his executors or adminiſtrators, ſhall and will, within the ſpace of 12 calendar months, from the time of the deceaſe of the party ſo dying, refund, and well and truly pay, or cauſe to be paid unto the executors, adminiſtrators, or aſſigns of the party deceaſed, ſuch ſums of money or rateable proportion of the ſaid ſum of £—— as is hereinafter in that behalf expreſſed; that is to ſay, the full and juſt ſum of £ —— of lawful money of Great Britain, in caſe the ſaid ——— ſhall depart this life within the ſpace of 6 calendar months, from the ſaid 25th day of *March*, and the ſum of £ —— of like lawful money, in caſe

of the deceaſe of the ſaid ———— within the ſpace of 12 calendar months, from the aforeſaid 25th day of *March*. AND FURTHER, that no apprentice, clerk, pupil, writer, or agent, ſhall be taken or employed in the buſineſs of the ſaid Copartnerſhip by either of the ſaid parties, without the privity, or contrary to the inclination or diſſent of the other of them (ſuch diſſent being expreſsly declared in writing under the hand of the party diſſenting) and if either of the ſaid parties ſhall take or employ any pupil, apprentice, clerk, or agent, without the privity or contrary to the diſſent of the other of them as aforeſaid, the party ſo taking or employing ſuch pupil, apprentice, clerk, or agent, ſhall ſolely and alone be anſwerable for any and every miſconduct, act of negligence, diſhoneſty, or infidelity, of ſuch pupil, apprentice, clerk, or agent, in or about the affairs of the ſaid Copartnerſhip, and ſhall and will from time to time, and at all times make good, pay and reimburſe out of his own private eſtate, not belonging to the ſaid Copartnerſhip, all and every ſum and ſums of money, expence, coſt, damage, or injury which the ſaid joint ſtock or trade may ſuſtain, or without this preſent ſtipulation would ſuſtain by reaſon of any ſuch miſconduct, act of diſhoneſty, or infidelity. AND LASTLY, it is hereby covenanted, concluded, and agreed, by and between the ſaid parties to theſe preſents, and each

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No apprentice, clerk, &c. to be taken without mutual conſent.

Diſputes to be referred to arbitration.

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of them, doth hereby accordingly for himſelf, his executors, adminiſtrators, and aſſigns, covenant, promiſe, declare, and agree to and with the other of them, his executors, adminiſtrators, and aſſigns, that if at any time during the continuance of this Copartnerſhip, or at or after the end thereof, any variance, controverſy, diſpute, doubt, or queſtion ſhall happen, ariſe, or be made, by or between the ſaid parties, their executors, adminiſtrators, or aſſigns, or by or between the ſurvivor of them, and the executors, or adminiſtrators of either of them deceaſed, or by or between any of them, and any other perſon or perſons claiming under any or either of them reſpectively, concerning the ſaid joint trade, or other matter or thing relating to the ſaid Copartnerſhip, or the intereſt of them, any, or either of them, therein; or concerning any matter or thing whatſoever contained in theſe preſents, or the meaning or conſtruction thereof, then, and in all, and every ſuch caſe or caſes, and as often as the ſame ſhall happen, and before any ſuit or action at law or in equity ſhall be commenced, brought, or inſtituted, (*a*) by any of the parties or perſons between whom any ſuch variance, controverſy, doubt, diſpute, or queſtion ſhall ariſe, be made, or happen, and to prevent

(*a*) See Halfhide *v.* Fenning, 2 *Brown. Ch. Rep.* 336, alſo Michael *v.* Harris, 4 *Ibid.* 311. and 2 *F. Vez.* 129. *S. C.*

any ſuch ſuit or action being commenced, brought, or inſtituted, as far as the power of the parties hereto in that behalf now lies and extends, and in caſe the parties or perſons between whom ſuch queſtion or queſtions, differences, diſputes, or controverſies ſhall ariſe, cannot agree to ſettle and determine the ſame between or amongſt themſelves, all and every ſuch queſtions, differences, diſputes, doubts, and controverſies ſhall be referred and ſubmitted by the parties and perſons between whom the ſame ſhall have ariſen or ſubſiſt, to the conſideration, judgment, arbitrament, final determination and award of two competent judges and indifferent perſons, to be named and appointed by and between the ſaid parties or perſons (the one to be named and appointed by the party, perſon or perſons, intereſted on the one ſide of ſuch queſtion or diſpute, and the other by the party, perſon or perſons, intereſted on the other ſide of ſuch queſtion or diſpute) together with any other or third indifferent perſon, whom ſuch arbitrators ſo choſen as aforeſaid, ſhall (either previous to, or after their entering upon the conſideration of the matters to them referred) (*a*) for that purpoſe think proper to name; and the award of ſuch three perſons ſo to be named, or any two of them, ſhall be final, and concluſive, and binding upon the parties or perſons between whom any ſuch

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(*a*) See 2 *Term. Rep.* 644.

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matter or queſtion, doubt, diſpute, or controverſy ſhall have ariſen or ſubſiſted, and the ſaid parties or perſons, their executors or adminiſtrators, ſhall and will attend ſuch arbitrators and umpire, or third perſon, and acquaint them and him with the matters and things in queſtion, or difference between them and of their ſeveral claims and allegations thereon, or in reſpect thereof, at ſuch time and place, and times and places, as the ſaid arbitrators and umpire ſhall appoint, together with ſuch books, papers, writings, documents, and evidences in their cuſtody or power reſpectively, relating to or concerning the matters in queſtion, as they or any two of them ſhall require to peruſe or inſpect; and in order the more certainly and effectually to bind the ſaid parties to the obſervance and performance of the award and determination of the ſaid arbitrators and umpire, agreeably to the true intents and meaning of theſe preſents, and of the parties hereto, it is hereby further covenanted, declared, and agreed, that the references of the parties, perſon or perſons, between whom any ſuch differences, doubts, or diſputes, as aforeſaid, ſhall ariſe or ſubſiſt, ſhall be by reciprocal bonds each in a ſufficient penalty (*a*) and under a

(*a*) See 3 *Black. Com.* 16. This bond may be given to a third perſon, or even to the arbitrators themſelves. See *Owdy* v. *Gibbons*, *Comb.* 100.

This

proper condition, well and truly to ſtand to, abide, perform, fulfil, and keep, the order, arbitrament, final determination, and award, of the perſons or arbitrators, and umpire, ſo to be indifferently choſen and named as aforeſaid, or of any two of them, ſo that the ſaid arbitrators and umpire, or any two of them, do, and ſhall make their determination and award in writing, under their hands and ſeals, and have the ſame ready to be delivered to the parties or perſons, ſubmitting, or agreeing to ſubmit thereto, within twenty days next, after the day of the date of ſuch bond, and to make void the ſame, as uſual in ſuch bonds; and which bonds ſhall be ſigned, ſealed, and interchangeably delivered by and between ſuch parties and perſons reſpectively, between whom any ſuch matters, doubts, queſtions or diſputes ſhall ariſe, within thirty days next after ſuch matters in queſtion ſhall ſo happen or ariſe, or after requeſt

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This bond, if given by a *feme ſole*, will be forfeited by her marriage. 2 *Keb.* 865, but if the huſband and wife ſubmit again, the courts will not encourage the oppoſite party in recovery of the forfeiture. 3 *Ibid.* 9.

It is ſometimes provided that the coſts ſhall abide the event of the award; but as the awarding coſts is incidental to the authority of the arbitrators, this proviſion ſeems improper, as reſtricting the power which they would otherwiſe have, of giving coſts at their election. See 2. *Durnf. & Eaſt. Rep.* 644.

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ſhall in that behalf be made in writing, by any of the parties intereſted, under, his, her, or their hand or hands, on pain to the party, perſon or perſons refuſing, of forfeiting and paying to the party, perſon or perſons aggrieved, all coſts, damages, and expences which ſhall or may happen, ariſe, or be occaſioned by reaſon, or in conſequence of ſuch refuſal, and of all actions and ſuits which ſhall be brought or commenced by ſuch party perſon or perſons ſo refuſing. AND further, that ſuch references and ſubmiſſions aforeſaid, reſpectively ſhall in purſuance of an act of Parliament, made in the ninth and tenth year of the reign of king William the third, (entitled an act for determining differences by arbitration) be made an order of the high court of chancery, or other the king's courts at Weſtminſter, if ſuch court ſhall ſo pleaſe to order, and that any or either of the ſaid parties, as aforeſaid, ſhall be at liberty, and are hereby authoriſed, and impowered to apply to the ſaid court for ſuch an order, and to inſtruct counſel to conſent thereto, for the other party, perſon, or perſons ſo ſubmitting as aforeſaid. AND LASTLY, it is hereby agreed by and between the ſaid parties hereto, that all and every ſuit, fee or fees, which the ſaid arbitrators or umpire ſhall give to any counſel in the law, for his advice or direction in the premiſes, or ſhall neceſſarily pay, expend, or diſburſe, in making their or his arbitration or

award upon, or concerning the matter ſo to them to be referred, ſhall be equally borne and diſcharged by each of the ſaid parties to theſe preſents, his executors, adminiſtrators and aſſigns.— In witneſs, &c. COPARTNERSHIP.

Articles (a) of diſſolution of a Copartnerſhip by Indenture, in which the trade not anſwering the parties expectations, they agree to divide the joint ſtock, for which purpoſe it is veſted in one of the parties upon appropriate truſts.

THIS indenture made the ——— day of ——— in the ——— year, &c, and in the year of our Lord ——— between *J. H.* of &c. of the firſt part, *T. B.* of &c. of the ſecond part, and *S. H.* of &c. widow, and *J. D.* of &c. eſq. executrix and executor of the laſt will and teſtament of *W. H.* late of ——— aforeſaid eſq. deceaſed, and which ſaid *S. H.* is alſo reſiduary legatee named in the ſaid will, of the third part. Whereas by articles of agreement bearing date on or about the ——— day of ——— which was in the year ——— and made or mentioned to be made between the ſaid *J. H.* of the one part, and the ſaid *J. B.* of the other part, it is witneſſed, that the

Recital of the ſubſiſting part of copartnerſhip.

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ſaid *J. H.* and *J. B.* for the conſideration therein mentioned, did lawfully covenant and agree to become and continue copartners and joint traders in the art or myſtery of ſugar baking, and in the tranſacting ſuch other buſineſs as they ſhould agree on, for their mutual benefit and advantage, from the day of the date thereof, for the term of fourteen years from thence next enſuing, if they the ſaid parties ſhould ſo long live, ſubject to the proviſos, conditions, and agreements therein after contained. AND that the money, goods, utenſils and things then brought into the ſaid joint trade, by the ſaid *J. H.* and *T. B.* in equal proportions, and amounting in value to the ſum of ————, ſhould be uſed and employed as the capital ſtock for carrying on the ſaid joint trade, and it was by the ſaid articles (amongſt other things) provided and agreed, that ſuch of them the ſaid partners, ſhould during the ſaid copartnerſhip, or at the end and determination thereof, have a ſeveral right and intereſt of, in, and to one full and equal moiety or half part of the ſaid joint ſtock, and the profits thereof, and of all money, goods, wares and effects belonging thereto, as in and by the ſaid in-part recited articles, reference being thereunto had, will more fully appear. AND whereas the ſaid parties to ſaid recited articles in purſuance thereof, have carried on the ſaid trade in copartnerſhip, until the day of the date hereof, and on

Recital that the parties have carried on the buſineſs until the date hereof.

the ——— day of ——— laſt, a general and full account was taken, ſtated, and made up, by and between them the ſaid *J. H.* and *T. B.* of all the ſtock, wares, merchandiſes, goods, eſtates, debts, and effects remaining and being in the ſaid joint trade, or owing or belonging to them on account thereof, and alſo of all debts and other demands, due and owing by them the ſaid parties, concerning the ſaid joint trade, whereby it appears that the clear or actual balance of the ſaid copartnerſhip eſtate and effects after diſcharging the debts owing by the ſaid partners in reſpect thereof will be ſcarcely ſufficient to anſwer and pay to them the ſaid *J. H.* and *T. B.* their ſeveral ſhares of the ſaid capital ſtock ſo by them brought into the ſaid joint trade as aforeſaid, and therefore they have mutually agreed to determine and diſſolve the ſaid copartnerſhip.

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That an account has been ſtated by which it appearing that the copartnerſhip effects after payment of debts, &c. were found inſufficient to anſwer the capital, they have agreed to diſſolve the copartnerſhip.

And whereas the ſaid *J. H.* and *T. B.* ſtand indebted to the ſaid *S. H.* and *J. W.* as executors of the ſaid *W. H.* deceaſed, in the ſum of ——which was borrowed by them the ſaid *J. H.* and *T. B.* on their joint bond given to the ſaid *W. H.* deceaſed, for the further advancement, and better carrying on their ſaid copartnerſhip trade and buſineſs.

That the parties are indebted by bond to the executors.

And whereas the ſaid *J. H.* alſo ſtands ſeparately indebted to the ſaid *S. H.* and *J. W.* as executors as aforeſaid, in the principal ſum of ——— which was lent and advanced by the ſaid *W. H.* deceaſed,

That one of the partners is alſo ſeparately indebted to the ſame parties.

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to the ſaid *J. H.* on his own ſeparate bond, to enable him to raiſe and furniſh his ſhare and proportion of the capital ſtock, originally brought into the ſaid joint trade. AND whereas for making a full and ample proviſion for the payment of the ſaid ſum of ——— ſo ſecured by the ſaid joint bond of the ſaid *J. H.* and *T. B.* to the ſaid *W. H.* deceaſed, as aforeſaid, and all intereſt due and to grow and become due and payable in reſpect thereof, and of all and every other the debts and ſums of money due and owing by them the ſaid copartners, in the way of their joint trade and dealing. AND alſo for and towards payment and ſatisfaction of the ſaid ſum of ——— ſo ſeparately due and owing by the ſaid *J. H.* to the ſaid *S. H.* and *J. W.* as executors as aforeſaid, and the intereſt thereof, it hath been agreed by and between the ſaid parties to theſe preſents, that the whole of the ſaid copartnerſhip eſtate and effects ſhall be ſolely and abſolutely veſted in him the ſaid *T. B.* to the end and intent that the money ariſing thereby may in the firſt place be applied in payment of the ſaid bond debt, ſo jointly due and owing by them the ſaid *J. H.* and *T. B.* to the ſaid *S. H.* and *J. W.* as aforeſaid, and after payment thereof, then in ſatisfaction of all other, the debts owing in copartnerſhip by them the ſaid *J. H.* and *T. B.* and after full payment of all the ſaid copartnerſhip debts, then that the clear re-

Recital that to ſecure the payment of their monies.

It hath been agreed that the copartnerſhip effects ſhall be veſted in one of the copartners.

firſt to pay the copartners bond debt.

ſidue and ſurplus of the money ariſing by the ſale or diſpoſition of the ſaid copartnerſhip eſtate and effects, may be divided into two equal parts or ſhares, and one moiety or equal half part thereof retained and kept by the ſaid *T. B.* to and for his own proper uſe and benefit, and the other moiety or half part thereof, paid, applied and diſpoſed of, in or towards payment and ſatisfaction of the ſaid bond debt of ——— and intereſt ſo ſeparately due from and owing by the ſaid *J. H.* to the ſaid *S. H.* and *J. W.* as aforeſaid, and in caſe of any ſurplus after payment thereof, that the ſame ſhall be paid to the ſaid *J. H.* for his own proper uſe and benefit. NOW THESE PRESENTS WITNESS, that the ſaid *J. H.* and *T. B.* with the mutual conſent of each other, have determined, vacated and diſſolved, and by theſe preſents, do determine, vacate, and diſſolve the ſaid copartnerſhip and joint trade heretofore carried on between them the ſaid parties, and alſo the ſaid in part recited articles, and every agreement, clauſe, matter, and thing therein counted, and do hereby ſeverally declare and agree that the ſame and every of them, ſhall from henceforth ceaſe, determine, and be null and void to all intents and purpoſes whatſoever, as if the ſaid copartnerſhip had never been entered into, and the ſaid articles or any of them had never been made. AND theſe preſents further witneſs, that in purſuance nd performance of the herein before recited agreement, and for carrying

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then to divide the reſidue into two parts, and to retain one part to his own uſe,

and out of the other part diſcharge the other copartner's bond debt, and pay the ſurplus to ſuch copartner.

Agreement for the diſſolution of the copartnerſhip.

The aſſignment of a moiety of the effects from one copartner to the other.

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the ſame into execution, and alſo for and in conſideration of the ſum of —— of good and lawful money of Great Britain, by the ſaid *T. B.* in hand, well and truly paid to the ſaid *J. H.* at and immediately before the enſealing and delivery of theſe preſents, the receipt whereof is hereby acknowledged, he the ſaid *J. H.* by and with the privity, aſſent and concurrence of them the ſaid *S. H.* and *J. W.* (teſtified by their reſpectively being made parties to, and ſealing and executing theſe preſents) hath granted, bargained, ſold, releaſed, aſſigned transferred and ſet over, and by theſe preſents doth grant, bargain, ſell, releaſe, aſſign, transfer, and ſet over, unto the ſaid *T. B.* his executors, adminiſtrators and aſſigns, all that the moiety, part, proportion, ſhare and intereſt of him the ſaid *J. H.* of and in all the ſtock and trade, leaſehold eſtate and intereſt, wares, merchandiſes, ready money, debts outſtanding, goods, chattels, utenſils and effects belonging to the ſaid joint trade and copartnerſhip, or to them the ſaid *J. H.* and *T. B.* or either of them in reſpect thereof, and all the eſtate, right, title, and intereſt, property, poſſeſſion, benefit, claim, and demand whatſoever, both at law and in equity, of him the ſaid *J. H.* of, in, to, or out of the ſaid copartner's eſtate and premiſes, or any part thereof, together with all and ſingular, the books of account relating to the ſaid joint trade, To have hold, perceive, receive, take, and enjoy the ſaid eſtate and

premiſes, mentioned to be hereby aſſigned or releaſed, with all and every of the appurtenances unto the ſaid *T. B.* his executors, adminiſtrators and aſſigns, from henceforth for ever upon truſt, nevertheleſs, and to the end, intent, and purpoſe, that he the ſaid *T. B.* his executors, adminiſtrators, or aſſigns, ſhall and will with all convenient ſpeed, ſell and diſpoſe of the ſaid copartnerſhip eſtate, ſtock in trade, and effects for the moſt and beſt price that can be got for the ſame, and uſe his and their beſt means and endeavours to get in, collect, and receive all and ſingular the debt and debts, ſum and ſums of money, due and owing to the ſaid *J. H.* and *T. B.* in partnerſhip or otherwiſe, and ſhall and will pay and diſpoſe of the net monies ariſing thereby, after deducting the neceſſary expences attending the recovery and receiving the ſame, and executing the truſt aforeſaid, in the firſt place in diſcharging the ſum of ——— jointly owing by the ſaid *J. H.* and *T. B.* to the ſaid *S. H.* and *J. W.* as executors as aforeſaid, with the intereſt, due thereon, and all other the debts owing by the ſaid *J. H.* and *T. W.* as copartners, to any other perſon or perſons whomſoever, and after payment and ſatisfaction thereof, ſhall and will divide the clear ſurplus and reſidue thereof, into two equal parts or ſhares, in truſt, after retaining or keeping to himſelf the ſaid *T. B.* one full moiety or equal half-part thereof, to pay, apply and diſpoſe of the ſame, for or towards a

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upon truſt.

To ſell the effects, get in debts, &c.

for the purpoſe of diſcharging copartnerſhip debts.

the ſurplus to be then divided into two parts, one of which to be retained to his own uſe, the other to be applied in

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payment and ſatisfaction of the principal money and intereſt due and to become due on the bond ſo ſeparately entered into by the ſaid *J. H.* to the ſaid *W. H.* under and purſuant to the terms of the agreement, hereinbefore recited to have been made between the ſaid *S. H.* and *J. H.* touching the ſame, and the true intent and meaning thereof; and after full payment thereof, ſhall and will ſtand and be poſſeſſed of the ſurplus or reſidue of ſuch laſt mentioned moiety, in truſt for the ſaid *J. H.* his executors, adminiſtrators or aſſigns. AND ALSO, that he the ſaid *T. B.* his executors or adminiſtrators, ſhall and will, from time to time, and at all times hereafter, upon every reaſonable requeſt of the ſaid *J. H. S. H.* and *J. W.* or any or either of them, give and render unto them the ſaid *J. H. S. H.* and *J. W.* reſpectively, a juſt and true account of all and every ſuch ſum and ſums of money, or other ſatisfaction, as ſhall or may have then been raiſed, obtained, or received, by the ſaid *T. B.* his executors or adminiſtrators, out of the ſaid copartnerſhip eſtate and effects, and ſhall and will pay, apply, and diſpoſe of all ſuch money and other ſatisfaction as ſhall be ſo received, when and as often as the ſame ſhall amount to the ſum of —— or upwards, to, for, and upon the ſeveral truſts, intents, and purpoſes hereinbefore mentioned, concerning the produce or clear ſurplus of the ſaid copartnerſhip eſtate and effects, and according to

diſcharge of a ſeparate bond debt of the other party.

And the reſidue to be paid over to ſuch debtor.

Covenant from the aſſignee to apply the effects agreeably to the truſts.

the true intent and meaning of theſe preſents. COPART-
AND FURTHER, that he the ſaid *T. W.* his execu- NERSHIP.
tors or adminiſtrators, ſhall and will permit and
ſuffer the ſaid *J. H. S. H.* and *J. W.* or any or
either of them, and alſo *S. B.* father of the
ſaid *T. W.* at convenient times during the tranſ-
actions aforeſaid, to have the ſight and peruſal of
all and every the books, papers, and writings, in
any wiſe relating to the ſaid joint trade and co-
partnerſhip, or to the outſtanding debts belong-
ing thereunto, with liberty to tranſcribe and copy
out the ſame at her, his, their, or any of their
free will and pleaſure. AND in order the better
to enable the ſaid *T. B.* his executors and admi-
niſtrators, to receive and get in the ſaid copartner-
ſhip eſtate, debts, and effects, he the ſaid *J. H.*
hath made, ordained, conſtituted, and appointed,
and by theſe preſents doth make, ordain, conſti-
tute and appoint the ſaid *T. B.* the true and law-
ful attorney of him the ſaid *J. H.* for him, and in
his name, or in the joint names of them the ſaid
J. H. and *T. B.* but to, for, and upon the ſeveral
uſes, truſts, intents, and purpoſes, hereinbefore
mentioned, expreſſed, and declared, concerning
the ſame, to aſk, demand, ſue for, recover, and
receive, poſſeſs, and enjoy, all and ſingular the
ſaid copartnerſhip eſtate and effects, as well chat-
tels real as chattels perſonal, in poſſeſſion or in
action, and of what nature or kind ſoever, and
whereſoever, in any wiſe belonging to the ſaid

And that he will permit the other party and a ſtranger to inſpect the books, &c.

A power of attorney to get in the effects.

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joint trade and copartnerſhip, and to give receipts or other ſufficient diſcharges for the ſame; and one or more attorney or attornies under him and them, for the purpoſes aforeſaid, to make, and at pleaſure to revoke, and generally to uſe, take, and proſecute any and every lawful or equitable method, cauſe, or expedient, for the recovering, receiving, and getting in the ſaid copartnerſhip eſtate, debts, and effects, or any part thereof, and for applying and diſpoſing of the ſame to, for, and upon the ſeveral uſes, truſts, intents, and purpoſes hereinbefore mentioned and declared, concerning the ſame, and according to the true intent and meaning of theſe preſents, in as full, ample, and beneficial a manner, to all intents and purpoſes, as the ſaid *J. H.* and *T. B.* or either of them, might or could do in caſe the ſaid copartnerſhip had not been diſſolved, and theſe preſents had not been made. AND the ſaid *J. H.* for himſelf, his heirs, executors, and adminiſtrators, doth covenant, promiſe, and agree, to and with the ſaid *T. B.* his executors and adminiſtrators, by theſe preſents, that he the ſaid *J. H.* ſhall and will, from time to time, and at all times hereafter, at the requeſt of the ſaid *T. B.* but at the joint coſts and charges, in the law of the ſaid *T. B.* and the ſaid *J. H.* do execute or join in all and every other ſuch further acts, conveyances, and aſſurances, as ſhall be requiſite for enabling the ſaid *T. B.* his executors or adminiſtrators, to re-

Power to appoint a deputy.

Covenant from the aſſigning partner to execute further aſſurances.

cover, receive, and get in the copartnerſhip eſtate, debts and effects aforeſaid; and alſo to ſell, aſſign, and diſpoſe of the ſame, and every part thereof, for the purpoſe aforeſaid, as by him the ſaid *T. B.* his executors, or adminiſtrators, or his or their counſel in the law, ſhall be adviſed and required. And alſo that he, the ſaid *J. H.* ſhall not, nor will at any time hereafter, revoke, cancel, or make void the power of attorney hereinbefore contained, nor relieve, releaſe, or diſcharge, any of the ſaid Copartnerſhip eſtate, debts, and effects, nor diſavow nor become nonſuit in any action or ſuit which ſhall be commenced, ſued, or proſecuted, for the recovery thereof. And laſtly, that it ſhall and may be lawful to and for the ſaid *T. B.* his executors, or adminiſtrators, to employ any proper perſon or perſons to recover, get in, collect, and receive the ſaid Copartnerſhip eſtate, and effects, and to make any reaſonable allowance thereout to him and them, for their care, pain, and trouble, in and about the ſame. In witneſs, &c.

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the aſſignee may appoint a perſon to collect debts, &c.

Agreement between a perſon who is retiring from the active part of a buſineſs, and another who is to conduct the ſame for their mutual benefit.

ARTICLES OF AGREEMENT made, &c. BETWEEN *I. L.* aforeſaid of the one part, and *T. E.* of, &c. of the other part. Whereas, the ſaid *T. E.* hath conducted and managed for ſome time paſt, the

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trade or buſineſs of the ſaid *I. L.* and in conſideration of the aſſiduity and attention of the ſaid *T. E.* thereunto, he, the ſaid *I. L.* is willing to continue him in the management thereof, under the covenants, reſtrictions, and agreements, hereinafter contained; and in conſequence thereof, an inventory and appraiſement hath been made and taken of the ſtock, and entered into two receipt books, one of which is to remain in the cuſtody of each of them, the ſaid parties to theſe preſents, and is ſubſcribed by both of them and the value of the ſaid ſtock in the whole, appears to the amount of the ſum of £ —. NOW THESE PRESENTS WITNESS, that for and in conſideration of the covenants and agreements hereinafter contained on the part of the ſaid *T. E.* to be performed, the ſaid *I. L.* for himſelf, his executors and adminiſtrators, doth hereby covenant, promiſe, and agree to and with the ſaid *T. E.* that it ſhall and may be lawful to and for the ſaid *T. E.* from time to time during the term of 11 years, to be computed from the day of the date of theſe preſents, if they, the ſaid *I. L.* and *T. E.* ſhall jointly ſo long live, to trade with the ſaid ſtock, and to manage and improve the ſame in ſuch manner as the ſaid *T. E.* under the direction of him the ſaid *I. L.* ſhall ſeem meet, upon truſt nevertheleſs, and to the intent and purpoſe that the ſaid *T. E.* ſhall and do, by and out, of the money which ſhall ariſe by ſale of any part or parts of the ſaid ſtock, buy ſuch goods as ſhall be requiſite to keep up and continue

Covenant that a perſon ſhall manage the buſineſs.

Upon truſt to buy goods to keep up ſtock.

the preſent quality and value thereof, and by and out of the profits which ſhall ariſe from the trade and dealing: in the firſt place, yearly and every year, pay the whole rent of the ſaid houſe and ſhop, and pay and diſcharge all taxes and parochial duties which now, are, or ſhall hereafter be, aſſeſſed or impoſed on him, the ſaid *I. L.* or the ſaid *T. E.* on account of the ſaid houſe and trade, and in the next place to pay to him, the ſaid *I. L.* or his aſſigns, yearly and every year during the ſaid term of 11 years, if they, the ſaid *I. L.* and *T. E.* ſhall ſo long live, one clear annuity or yearly ſum of £—— by equal half yearly payments, on the — day of —— and the — day of, — without any deduction or abatement whatſoever, and ſubject thereto to retain the reſidue and overplus of the profits which ſhall ariſe from his trade and dealing to and for his own ſole uſe and benefit as a recompence and ſatisfaction for his care and trouble in the ſale and management of the ſaid ſtock. And the ſaid *T. E.* in conſideration of the premiſes and of the covenant and agreement hereinbefore, on the part of the ſaid *I. L.* contained, doth for himſelf, his executors and adminiſtrators, covenant, declare and agree, that he, the ſaid *T. E.* ſhall and will, from time to time, and at all times for and during the ſaid term of eleven years, if they, the ſaid *I. L.* and *T. E.* ſhall ſo long jointly live, diligently apply himſelf to the care and management of the ſaid ſtock, trade, and buſineſs,

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To pay rent, &c.

To pay annuity.

To retain reſidue for himſelf.

Covenant to manage buſineſs,

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according to his beſt ſkill, abilities, and diſcretion, and apply and diſpoſe of the money which ſhall ariſe from the ſale thereof, and all the profits of his trade and dealings, to anſwer and diſcharge the truſts hereby repoſed in him, in ſuch manner as hereinbefore is directed, declared, or expreſſed. And alſo ſhall or will write true and perfect entries in proper books of account of all ſuch goods as ſhall be ſold, and of all monies which ſhall be paid and received by him, and permit the ſame, from time to time, to be inſpected by him, the ſaid *I. L.* or ſuch other perſon or perſons as he ſhall appoint. AND FURTHER, that he, the ſaid *T. E.* ſhall not, nor will at any time during the continuance of the ſaid term of 11 years, buy, or ſell, or in anywiſe trade or deal in his own name, but in the name only of him, the ſaid *I. L.* upon the truſts aforeſaid; nor do any act whatſoever whereby the ſaid ſtock, or any part thereof, may be attached, entered, or taken in execution. And alſo, that at Chriſtmas next, and ſo at every ſucceeding Chriſtmas, during the continuance of the ſaid term of 11 years, or oftener, if thereto required, by the ſaid *I. L.* he, the ſaid *T. E.* ſhall and will take a full account, and reſt in writing of the ſaid ſtock then remaining in the ſaid trade, and of the profits thereof, and deliver the ſame to the ſaid *I. L.* in order to manifeſt to him a true ſtate thereof, and of his proceedings in the trade by him carried on therewith. And that at the expiration

and diſcharge truſts.

To keep accounts.

Not to trade in his own name,

nor do any act whereby ſtock may be attached, &c.

to take account of ſtock yearly.

At the expiration of term to deliver up ſtock.

or other ſooner determination of the ſaid term of 11 years, he, the ſaid *T. E.* his executors or adminiſtrators, ſhall and will deliver up to him, the ſaid *I. L.* his executors or adminiſtrators, the ſtock then remaining for his or their own uſe and benefit, to the value of the ſum of £——, loſſes by bad debts, decay of goods, and other inevitable caſualties excepted. In witneſs, &c. COPARTNERSHIP.

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* *An Agreement between certain Perſons forming themſelves into a Copartnerſhip Society for the promotion of Agriculture.*

ARTICLES of Agreement, entered into, and concluded upon this 9th day of *Auguſt*, in the 30th year of the reign of our Sovereign Lord George the Third, by the Grace of God, &c. and in the year of our Lord, 1790. BY AND BETWEEN *James Wirefield, of —— jacob Furthering, &c. &c. &c.* AND other the perſon or perſons who ſhall hereafter ſign and ſeal theſe preſents, for the purpoſe of becoming parties thereto, under or by virtue of any or either of the covenants, proviſos, or agreements hereinafter contained as follows. WHEREAS, at ſeveral meetings of the ſaid parties hereto had at —— in the county of —— for the purpoſe of determining on the utility and expediency of an aſſociation for experiments in agriculture, and particularly at a meet- Parties. recital of previous proceedings.

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ing there held for that purpoſe on or about the ——— day of ——— laſt paſt, it was in and by certain reſolutions then and there reduced into writing, amongſt other things unanimouſly and finally reſolved, that in order to promote and improve the theory and practice of Agriculture, and particularly to aſcertain the comparative merits of the drill and broad-caſt huſbandry, and the conſequent benefit which the community at large might derive therefrom, they, the ſaid parties, with a view to thoſe and other ends, did thereby form or agree to form themſelves into a ſociety under the denomination of the Experimental Farming Aſſociation. And it was further reſolved, that a certain Farm, conſiſting of about 500 acres of incloſed land, with an extenſive ſheep-down belonging thereto, late in the occupation of ——— ſituate in the pariſh of ——— in the county of ——— and whereof ——— was and is the proprietor, ſhould be taken by the ſaid *J. W.* in the name of and on the behalf of the ſaid ſociety, at the rent of —— per Annum, on a leaſe of 21 years, determinable at the option of the ſociety, at the end of the firſt ſeven or fourteen years of the ſaid term; and that for the renting the aforeſaid Farm as propoſed, and making the ſeveral experiments which the ſociety might be inclined to try thereon, a capital of 5000l. ſhould be raiſed in ſhares of 100l. each, payable to the treaſurer of

the ſaid ſociety, by every perſon immediately on his becoming a member thereof. AND WHEREAS at a general meeting of many of the ſaid parties hereto, held at ——— aforeſaid, on the ——— day of ——— laſt, the ſaid ——— was choſen proviſional treaſurer of the ſaid ſociety, and ——— was choſen proviſional ſecretary to the ſaid ſociety, ſubject to the approbation of the ſaid ſociety, at the next general meeting to be held thereof, upon or after the execution of theſe preſents. AND WHEREAS the ſaid parties to theſe preſents have ſeverally agreed to ſubſcribe, and they have accordingly, at or previous to the day of the date hereof, ſubſcribed and reſpectively paid into the hands of the ſaid ——— as ſuch proviſional treaſurer, as aforeſaid, for the uſe and purpoſes of the ſaid aſſociation, the ſeveral ſums herein after mentioned, as and for their reſpective ſhares and proportions of and in the capital ſtock, intereſt and concerns of the ſaid ſociety, (that is to ſay) the ſaid ——— the ſum of ——— &c. AND WHEREAS a leaſe or demiſe of the ſaid farms and lands ſituate at ——— aforeſaid, agreeably to the reſolution herein before mentioned, to have been entered into for that purpoſe, has been taken by or on behalf of the ſaid ſociety, for the term of ——— years to be computed from the ——— day of ——— next, determinable nevertheleſs, at the end of the firſt —— or —— years of the term as aforeſaid, and a counterpart

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Recital of a Leaſe granted to one of the members in truſt for the ſociety.

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thereof, bearing date on or about the ——— day ——— has accordingly been executed by the ſaid ——— as truſtee, for and on the behalf, and for the uſe and benefit of the ſaid ſociety. NOW THIS INDENTURE WITNESSETH that in purſuance and performance of the herein before in part recited reſolutions, and for the better and more effectually forming the ſaid aſſociation, and eſtabliſhing the rules and regulations under and by which the ſame ſhall be governed with the view and deſign, and in order to extend and improve the theory and practice of agriculture in general, according to the various ſyſtems herein-before in uſe, or which may be hereafter deviſed and more particularly to aſcertain the comparative merits of the drill and broad-caſt huſbandry reſpectively. And for and in conſideration of the ſeveral ſums of money hereinbefore mentioned to have been paid by each of the ſaid parties hereto, as aforeſaid, and of ſuch other ſums as may be hereafter paid by any future member or members of the ſaid ſociety, for the uſe and benefit of themſelves reſpectively and of the other and others of them as members of the ſaid ſociety, they the ſaid parties to theſe preſents, have mutually and reciprocally covenanted, granted, declared, promiſed, and agreed, to and with each other, AND by theſe preſents, each of them doth for himſelf, his heirs, executors, and adminiſtrators, covenant, grant, declare, promiſe, and agree, to and with the other

Witneſs that the parties agree to form themſelves into a ſociety.

Mutual covenants between the parties.

and others of them, his and their executors, administrators, and assigns, in manner following, (that is to say,) that they the said several parties to these presents, are become, and shall and will be, remain, and continue, connected and associated with, and firmly bound unto the other and others of them, by and under the title or style of members of "*The* ——— ——— ———," instituted for the county of ———, for the purpose of improving and extending the theory and practice of agriculture, as aforesaid, as well for their joint, mutual, and common benefit and advantage, as for the benefit which may result therefrom to the community at large, upon and from the day of the date of these presents, for and during, and until the full end and term of 21 years from thence next ensuing, determinable nevertheless, in such manner, and to subsist and continue in the mean time under and subject to such covenants, provisos, conditions, restrictions, limitations, and agreements, as are hereinafter particularly set forth, and such further and other rules, orders, regulations, and agreements, as shall from time to time be made, resolved upon, and established, by virtue and in pursuance of the several covenants, provisos, and agreements, hereinafter contained in that behalf, or any or either of them. And it is hereby further covenanted, declared, and agreed, by and between the said parties hereto, in manner and form aforesaid, that the

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Duration of the society.

Limitation of members.

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ſaid ſociety ſhall not at any time during the continuance thereof, conſiſt of or contain more than 20 members at any one and the ſame period.

Capital of the ſociety.

AND it is hereby further declared and agreed, that the capital ſtock or fund of the ſaid ſociety, is, and during the continuance of the ſaid ſociety, ſhall be, and remain divided into and compoſed of 50 numerical ſhares, of the amount or nominal value of —— each, making together in the whole the ſum of ———, of lawful Britiſh money, which ſaid ſum of ———, ſhall be and be conſidered as the ſtanding fund or capital of the ſaid ſociety, for carrying into execution the ſeveral intents and purpoſes thereof.

Number of ſhares, &c.

AND FURTHER, that no greater number of ſhares, nor any number of ſhares to a greater nominal or numerical amount, (unleſs by reaſon of ſuch ſharer or member poſſeſſing more than one of ſuch ſhares,) ſhall at any time be admitted, orhad of, or in the concerns, intereſt, or capital of the ſociety, without the conſent of the major part of the members thereof, duly and orderly had and obtained for that purpoſe, according to the rules and forms of the ſaid ſociety.

Each member to have one vote.

AND IT IS HEREBY FURTHER AGREED, by and between the ſaid parties, that each member of the ſaid ſociety ſhall have one voice or vote (and no more,) upon every or any ſubject, propoſition, or queſtion, which ſhall ariſe, be diſcuſſed, or be put relating to the affairs of the ſaid aſſociation, for and in reſpect of each ſhare which he ſhall hold or

poſſeſs in the intereſt or capital of the ſaid ſociety. COPART-
And it is hereby further agreed by and between NERSHIP.
the ſaid parties, that the buſineſs, concerns, and Place of conducting the affairs of the ſociety.
management of the ſaid ſociety ſhall, from time to time, be carried on and conducted at the farm houſe of the ſaid ſociety, at ———, aforeſaid, unleſs and until ſome other place ſhall be hereafter agreed upon for that purpoſe, at a general meeting of the ſaid ſociety. And it is The members to have equal intereſts in the concern,
further declared and agreed, that the ſaid ſociety, and the concerns thereof, ſhall be carried on and conducted for the mutual and common benefit of the ſeveral members thereof, according to the number of ſhares, or quantity of intereſt which each of them ſhall have therein, or in the concerns, intereſt, or capital ſtock thereof, for the time being. And further, that each of and diſtinct eſtates.
the ſaid members, his executors, adminiſtrators, or aſſigns, ſhall, at all times during the continuance of the ſaid aſſociation, and at the determination thereof, have, poſſeſs, and enjoy a ſeveral and diſtinct right, title, and intereſt, of, in, and to his ſaid part and ſhare, or parts and ſhares, of and in the ſaid capital ſtock, eſtate, and effects, of the ſaid ſociety, and the produce, gains, and increaſe accruing thereupon, to and for his and their own, proper, and individual uſe and benefit, and ſo and in ſuch manner and form as that the ſame or any part thereof ſhall not only be aſſignable and transferrible during his

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and their life time reſpectively, but ſhall and may, on his or their deceaſe, belong and go to his and their executors or adminiſtrators, and not accrue or belong to the ſurviving members, or longeſt liver or longeſt livers of the ſaid parties, or either of them, by right of ſurvivorſhip, or otherwiſe, howſoever. PROVIDED, nevertheleſs, that in caſe any ſhare or intereſt of the ſaid ſociety ſhall veſt in any aſſignee, grantee, legatee, or repreſentative, he, ſhe and they, ſhall, within the ſpace of 3 months thereafter, (unleſs prevented by illneſs or other reaſonable cauſe,) give notice thereof, in writing, to the treaſurer for the time being, of the ſaid ſociety, and ſhall, when thereunto required, ſign and ſeal this preſent indenture, or ſuch other writing as ſhall be ſufficient in the law to make him, her, or them, a member or members of the ſaid ſociety, and bound by the rules and orders thereof, or otherwiſe he, ſhe, or they, ſhall be excluded from all benefit and advantage of ſuch aſſignment, grant, legacy, or repreſentation. AND it is hereby alſo agreed, by and between the ſaid parties hereto, that all and every the coſts, charges, loſſes, and expences, of what nature or kind ſoever, which ſhall ariſe, happen, or be ſuſtained, in conducting or carrying on the affairs of the ſaid ſociety (except only ſuch as ſhall be incurred or occaſioned by the wilful default or miſconduct of any or either of the ſaid parties in particular, which coſts, charges,

Aſſignee of ſhares to give notice, &c.

Expences to be equally borne.

loſſes, and expences, are to be paid, borne, and ſuſtained, by the party or parties ſo incurring or occaſioning the ſame,) ſhall be equally borne and paid by all and every of the members of the ſaid ſociety, out of, and from, and in proportion to their reſpective ſhares and intereſts in the joint capital ſtock thereof. AND alſo, that the produce or groſs returns of the capital ſtock of the ſaid ſociety ſhall, from time to time, be applied, in the firſt place, in diſcharging the rent reſerved or made payable in and by the aforeſaid leaſe or deviſe of the ſaid farm and lands, at ——, aforeſaid, or other farm lands and premiſes which may be hereafter taken or occupied by or for the uſe of the ſaid ſociety, together with all and every the rates, duties, taxes, and aſſeſſments, chargeable upon or payable in reſpect thereof, by the tenants or leſſees of the ſaid premiſes, or any part thereof. AND, in the next place, in paying, ſatisfying, and diſcharging the ſalaries, allowances, and wages, of all agents, ſervants, aſſiſtants, and labourers, retained or employed in any of the concerns of the ſaid ſociety, and all and every other the neceſſary and reaſonable charges and expences which ſhall be incurred in carrying on, conducting, promoting, and executing the affairs, plans, and purpoſes of the ſame. AND further, that all or any part of the nett and clear ſurplus of the profits, produce, and groſs returns of the ſaid capital ſtock, after full payment and ſatisfaction of the ſaid ſeveral

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Application of produce,

and net profits.

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ſum or ſums, charges, expences, matters, and things aforeſaid, ſhall, from time to time, be either laid out or inveſted on government or other good ſecurity or ſecurities, or in the purchaſe of cattle, implements of huſbandry, or other live or dead ſtock, upon or for the uſe of the farm of the ſaid ſociety, or ſhall otherwiſe be paid unto and divided between and amongſt the ſeveral members of the ſaid ſociety, their executors, adminiſtrators, or aſſigns, according and in proportion to their reſpective ſhares and intereſts in the capital ſtock of the ſaid ſociety, at ſuch times, and in ſuch manner, and at and according to the ſole diſcretion and judgment of the committee of the ſociety for the time being, to be nominated and appointed under the powers and directions hereinafter contained in that behalf. AND IT IS HEREBY further declared and agreed, by and between the ſaid parties, that the ſaid leaſe or demiſe ſo hereinbefore mentioned to be taken in truſt, and for the uſe of the ſaid ſociety as aforeſaid, ſhall not be determined, nor the farm or lands therein compriſed, or any of them, be ſurrendered, aſſigned, relinquiſhed, or given up, at any of the ſaid periods of ſeven or fourteen years, of or in the ſaid term of twenty-one years, in and by the ſaid leaſe granted thereof as aforeſaid, without the ſame being reſolved upon at a general meeting of the ſociety at leaſt one year previous to the expiration of any or either of ſuch

Leaſe not to be given up without the full aſſent of the members.

periods. AND that any member deſirous of relinquiſhing the ſaid farm, ſhall notify a propoſal, in writing, to that effect, to the ſecretary of the ſaid ſociety for the time being, at leaſt two months previous to the next general meeting to be held thereof. AND the ſaid ſecretary ſhall thereupon ſend or communicate the ſaid propoſal, or the purport and effect thereof, by letter, to every member of the ſaid ſociety, at leaſt ſix weeks previous to ſuch general meeting. And it is further declared and agreed, that unleſs and until ſuch notification ſhall be ſo made and given as aforeſaid, no queſtion or propoſal relative to any ſuch relinquiſhment ſhall be heard, put, or determined upon, or diſcuſſed, at any general or other meeting of the ſaid ſociety. AND it is further covenanted and agreed, by and between the ſaid parties hereto, that at or immediately before the expiration or diſſolution of this aſſociation, whether the ſame ſhall happen before, at, or after the aforeſaid term of 21 years, a final and general account and valuation ſhall be made, ſtated, ſettled, and adjuſted, by the committee for the time being, of all and ſingular the capital, ſtock, debts, credits, and other the property, eſtate, and effects, of the ſaid ſociety, which ſaid account and valuation ſhall be ſubmitted to and approved by a general meeting of the ſaid ſociety, to be held for that purpoſe, and when ſo approved, the ſame ſhall be concluſive and binding upon the ſeveral

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Valuation, &c. to be made at the diſſolution of the ſociety.

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members of the ſaid ſociety, their executors, adminiſtrators, and aſſigns, from thenceforth for ever, without being ſubject to any further or other inveſtigation or diſcuſſion whatever. AND upon ſettling ſuch final account, all and ſingular the live and dead ſtock, and other the eſtate and effects of the ſaid ſociety, (other than monies or ſecurities for money,) ſhall be ſold and diſpoſed of, either by public auction or private contract, at the diſcretion of the then or laſt ſubſiſting committee, and the produce to ariſe therefrom, together with the balance (if any,) which may then be in the hands of the treaſurer, (after payment and ſatisfaction of all juſt demands, debts, and demands of or upon the ſaid ſociety,) ſhall, as ſoon as conveniently may be thereafter, be divided and paid, between, amongſt, and to the ſeveral members of the ſaid ſociety, according to their reſpective ſhares and intereſts of and in the capital ſtock of the ſaid ſociety, and the produce thereof.

Any deficiency to be made up by the members.

PROVIDED always, that in caſe on ſuch final account, valuation, and ſale being made, it ſhall appear that the eſtate and effects of the ſociety are inſufficient to anſwer and pay the ſeveral juſt demands thereupon, then, and in ſuch caſe, ſuch deficiency ſhall be raiſed and made good by and out of the private eſtate and effects of the ſeveral members of the ſaid ſociety, according and in proportion to ſuch their ſhares and intereſts reſpectively as aforeſaid. PROVIDED

alſo, and it is hereby further declared, agreed, and expreſsly ſtipulated, by and between the ſaid parties to theſe preſents, that in caſe any or either of the proprietors or owners of ſhares in the ſaid ſociety, ſhall, during the continuance of this aſſociation, become inſolvent, and a commiſſion of bankruptcy be awarded againſt him, or them, then and in that caſe, and as often as any ſuch caſe ſhall happen, there ſhall, in lieu of all further claim out of or upon the eſtate or effects of the ſaid ſociety, be forthwith paid unto the aſſignees of the perſon or perſons ſo becoming bankrupt, ſo much money as ſhall happen to be his or their part or ſhare of and in the capital ſtock of the ſaid ſociety, and the produce thereof, in and by the then laſt preceding annual reſt or account, ſettled and adjuſted in manner aforeſaid, together with intereſt for the ſame at the rate of — per annum, from the day of ſettling ſuch account; and after payment thereof, ſuch perſon and perſons ſo becoming bankrupt, his and their executors adminiſtrators, and aſſigns, ſhall thenceforth ceaſe to be a member or members of the ſaid ſociety, or to be in any manner intereſted in the eſtate and effects or other concerns thereof. AND it is hereby declared and agreed, by and between the ſaid parties to theſe preſents, that in caſe any or either of the ſaid parties to theſe preſents ſhall, at any time or times during the continuance of this aſſociation, do, or cauſe to be done, any act, deed, matter, or

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Inſolvency of any of the members.

Fidelity of the members.

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thing, with an intent or design to injure, prejudice, or defeat the object or prosperity of this society, or shall neglect or fail well and truly to observe, perform, fulfill, and keep all and singular or any of the covenants, clauses, articles, provisions, and agreements, in these presents contained, or all or any of the rules, orders, and regulations which shall or may be hereafter made by virtue thereof, and which, on his and their respective parts and behalves are and ought to be observed, performed, fulfilled, and kept, according to the true intent and meaning thereof respectively, (such misconduct or default to be determined upon, ascertained, and established, at a general meeting of the said society, by a majority of at least three-fourths of the members then present,) that then and in every such case the person or persons so offending, or making default in any of the matters and things aforesaid, shall from thenceforth stand and be utterly debarred, and excluded of and from all future benefit and advantage, concern and interest, in or out of the said society, or the estate and effects thereof, under or by virtue of these presents, or otherwise, howsoever, and his and their share and shares, interests or proportions therein, shall be paid to him and them respectively, as soon as conveniently may be thereafter, and he and they shall forthwith quit and recede from the said society. AND the said ———, doth hereby, for himself, his heirs,

Declaration of trust of the lease.

executors, and adminiſtrators, covenant, promiſe, declare, and agree, to and with all and every other the parties hereto, ſeverally and reſpectively, and their ſeveral and reſpective executors, adminiſtrators, and aſſigns, that he the ſaid ——— his executors and adminiſtrators, ſhall and will, during the continuance of the ſaid ſociety, hold and be intereſted in the ſaid farm and lands at ———, ſo by him taken on behalf of the ſaid ſociety, as aforeſaid, in truſt, and to and for the ſole and only proper uſe and benefit of the ſaid ſociety, and to and for no other uſe or purpoſe whatſoever. And that he the ſaid ———, his executors or adminiſtrators, ſhall not, nor will any or either of them, at any time whatſoever, exerciſe or enjoy any ſeparate or excluſive poſſeſſion, ownerſhip, advantage, or intereſt therein, or in any part or parcel thereof, or do, or cauſe to be done, or ſuffer any act or thing whereby the ſame may be forfeited, ſurrendered, or become void or voidable. And they the ſaid other parties to theſe preſents, do hereby, for themſelves ſeverally and reſpectively, and for their ſeveral and reſpective heirs, executors, and adminiſtrators, covenant, promiſe, declare, and agree, to and with the ſaid ———, his executors and adminiſtrators, by theſe preſents, that they the ſaid parties, ſome or one of them, ſhall and will, at all times during the continuance of the ſaid aſſociation, pay, or cauſe to be paid, the ſeveral rents, taxes, duties, and

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assessments, and fulfil, observe, and keep the several provisos, covenants, and agreements, in the said demise, or lease, of the said premises reserved and contained, and which, on the part of the tenant or tenants, or lessee or lessees, are or ought to be paid, observed, performed, or kept, and shall and will indemnify and save harmless, him, the said ——— his executors and administrators, therefrom, and from every of them save only and except such part or portion thereof respectively, as he, the said ——— his executors, or administrators, ought to pay and perform according to the true intent and meaning of these presents. And for the more easy and beneficial management of the business and concerns of the said society, and the better regulating, conducting, and governing the same, and the affairs thereof, conformably to the intent and meaning of these presents. IT IS HEREBY declared and agreed by and between the several parties hereto, that immediately upon, or within — days after the completion of these presents, by the signing and sealing thereof by the several parties thereto, they, the said parties shall proceed to choose and elect from amongst themselves, ——— persons, to be and act as and in the name of a committee, for managing and conducting the general concerns of the said society, from thenceforth until the 1st Monday which shall happen in the month of —— now next ensuing. AND FURTHER, that a general meeting of

Committee to be chosen to manage the affairs of the society.

the ſaid parties, and other the members for the time being of the ſaid ſociety, ſhall be had and held twice in every year during the continuance of the ſaid Aſſociation on the firſt Monday in —— and the firſt Monday in ——— in each year, at the Farm Houſe of the ſaid ſociety, or at ſuch other place as ſhall be fixed or agreed upon by the major part of the proprietors and parties intereſted. And that at the ſaid general meeting ſo to be held on the ſaid firſt Monday in —— in each and every year, there ſhall be annually choſen, ſelected, and delegated, by ballot, or otherwiſe, as the major part of the ſaid proprietors and parties then preſent ſhall think fit, other of the ſame members of the ſaid ſociety, to be, and act in like manner as and in the name of a committee for managing the affairs of the ſaid ſociety. And it is hereby further declared and agreed, that any three of the committee of the ſaid ſociety, for the time being (provided they be duly ſummoned, and meet agreeably to the rules and forms of the ſociety eſtabliſhed in that behalf) ſhall be a *quorum*, and conſtitute an effectual and acting body. And ſuch the ſaid committee of the ſociety for the time being, ſhall have, and be inveſted with, and the ſame is and are, reſpectively, by theſe preſents, clothed and inveſted with full power and authority to manage, order, overſee, and tranſact, all and ſingular the affairs and buſineſs of the ſaid ſociety, and all matters and things whatſoever, relating

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Power of the committee.

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to or concerning the ſame. AND IT IS HEREBY declared, granted, and agreed, that the ſaid power and authority with which they are ſo hereby inveſted, ſhall include and extend, to as well the making or deviſing rules, orders, and regulations, touching the government, carrying on, and management of the ſaid ſociety, and naming and convening general meetings of the members of the ſaid ſociety, for ſpecial ends and purpoſes, when as often, and in ſuch manner and form as to ſuch committee ſhall ſeem fit, as alſo, to the diſpoſing, applying, and managing, of all the money, funds, and ſecurities belonging thereto, and the retaining, and employing, removing, and diſcharging the ſeveral principal agents or ſuperintendants, and other the agents, ſervants, and workmen (whether appointed to carry into execution the general plans and purpoſes, or employed in or about other the buſineſs or concerns of the ſaid ſociety) and the appointing, ſettling, and paying their reſpective ſalaries, wages, claims, and demands, and to act in all other reſpects whatſoever in ſuch way and manner as the ſaid committee ſo to be appointed as aforeſaid, or the major part of them (or of any three of them as aforeſaid) ſhall from time to time think fit to order, manage, and direct the ſame, as moſt for the intereſt, benefit, and welfare of the ſociety. PROVIDED nevertheleſs, and it is hereby expreſsly declared,

and agreed, that no debt or debts, ſhall be contracted by ſuch principal agents or ſuperintendants, any or either of them, in the name of, or for, or on behalf of this aſſociation, in the courſe of any one calendar month, beyond or exceeding the ſum of —— without the previous conſent of the committee, or any three of them, ſignified in writing, under their reſpective hands, to ſuch principal agents or ſuperintendants reſpectively. And it is hereby further declared and agreed, that the ſaid committee may from time to time, if they think proper, devolve to, and confide in the ſaid principal agents or ſuperintendants, the buying and ſelling for and on behalf of the ſaid ſociety, and executing other the orders of the ſaid committee relative to the buſineſs and affairs thereof, and alſo the direction or employment of the inferior ſervants and workmen, and the appointing, aſcertaining, ſettling, and paying the ſaid wages, claims, and demands of or due to ſuch ſervants and workmen reſpectively; they the ſaid committee at their diſcretion, taking ſufficient ſecurity from ſuch principal agents or ſuperintendants, for the due and faithful diſcharge of the truſts in them, any or either of them, repoſed. And it is hereby declared and agreed, that all and every the acts and deeds, rules, orders, and regulations of the committee of the ſociety for the time being, relative to the matters and things aforeſaid,

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Debts not to be contracted by ſervants.

Acts of the committee to be binding on the ſociety.

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and all other matters and things reſpecting the government of the general concerns of the ſaid ſociety, ſhall be binding and concluſive upon the ſame and the ſeveral individual members thereof, until the ſame ſhall be altered or reſcinded at ſome general annual meeting, to be held of the ſociety, and that by a majority of at leaſt three-fourths in number of the members then preſent.

Meetings of the committee.

AND it is hereby declared and agreed, that the ſaid committee to be choſen for the time being purſuant to theſe preſents, ſhall immediately after ſuch their election and formation, accept and take upon themſelves and enter upon and exerciſe the buſineſs and duty of their ſaid office and appointment, and be at liberty to have and hold meetings together, when and where and as often as to them or the major part of them ſhall ſeem proper and neceſſary, upon the buſineſs and matters relating to the ſaid ſociety; but it is hereby declared and agreed, that previous to every ſuch meeting, reaſonable notice thereof, of not leſs than — days, under the hand of the preſident, or the hands of any three or more of the committee, ſhall be given or ſent to the others of the ſaid committee, ſpecifying and mentioning therein the cauſe or occaſion of ſuch meeting, and the nature and purport of the principal queſtions, buſineſſes, and matters, intended to be there tranſacted or diſcuſſed, to the end and intent that the judgment therein of ſuch of the ſaid committee, who by reaſon of re-

mote reſidence, or other excuſable obſtructions or impediments, may be unable to be preſent at ſuch meeting, may be conſulted, and their opinions endeavoured to be obtained by epiſtolary correſpondence. AND it is hereby declared and agreed, that if upon the diſcuſſion of any meaſure, queſtion, or propoſition, by the ſaid committee, relative to any the affairs of the ſaid ſociety, there ſhall be an equal number of voices, ſuffrages, or opinions, for and againſt any ſuch meaſure, queſtion, or propoſition, then and in every ſuch caſe the preſident of the committee for the time being ſhall have a caſting or deciding voice, and conſtitute or have the effect of conſtituting a majority in favour of or againſt the meaſure or queſtion under conſideration. AND it is further declared and agreed, that the preſident of the committee for the time being, (who ſhall be ſo elected by the major part of the members of the committee then preſent) ſhall be preſident of all general meetings to be held within the year, to which ſuch committee ſhall be choſen, and that ſuch preſident ſhall have authority to chooſe a vice-preſident to preſide in his abſence. AND it is further declared and agreed, that the deciſion of every queſtion or propoſition which ſhall be propounded or diſcuſſed at any general meeting of the ſaid ſociety, ſhall be by ballot in manner following, (that is to ſay,) —— and three-fourths at leaſt of the members ſo balloting, ſhall in all caſes be

Preſident to have a caſting vote.

Diſcuſſion at the general meeting.

COPARTNERSHIP.

necessary to constitute a majority, so as to conclude and bind the society. And it is hereby further agreed, ordered, and declared, by and between the said parties to these presents, that the said —— shall be, and is hereby provisionally (and until approved by the first sitting committee of the society) appointed to be and act as secretary to the said society for the purposes of entering in proper books, so to be kept for that purpose, memorandums of all the meetings proceedings and resolutions of the said society, and that he the said —— shall be and is hereby also provisionally and until approved of by the first sitting committee of the said society, appointed to be and act as treasurer, for the purpose of receiving and keeping the money belonging to the said society, and issuing and paying the same agreeably and pursuant to the order and directions from time to time of the said committee, or such major part of them as aforesaid, each of whom when so approved, shall hold their said offices for the space of one year, to be accounted from the date hereof, and from thenceforward after the expiration of the said year, until such the said secretary and treasurer shall be re-elected, or some other person or persons be elected in their place and stead. And it is hereby further declared and agreed, that the committee of the said society for the time being, shall from time to time annually elect and appoint persons, either members of the society or

Appointment of treasurer and secretary.

Annual election of officers.

not, as they ſhall think proper, or releaſe and re-appoint the ſame perſon or perſons at their diſcretion, to be and act in the ſaid offices of ſecretary and treaſurer for the then next enſuing year, to be accounted from the day of ſuch election, and after the expiration of the ſaid year, then for ſuch further time and until they be reſpectively re-elected, or ſome other perſon or perſons be choſen to the ſaid offices reſpectively, in their reſpective places or ſteads. And it is hereby declared and agreed, that ſuch treaſurer for the time being, ſhall give ſecurity, if required by the ſaid committee, for the due performance of his truſt, and ſhall have and be allowed if he ſhall require it, a clerk, for the providing and keeping all neceſſary and proper books of account, wherein ſhall be written and entered a true and perfect account of all the monies which ſhall from time to time be collected and received by ſuch treaſurer or his clerk, or by him or either of their order, and alſo a true and perfect account of the application of all ſuch monies, whether the ſame or any part thereof, ſhall be paid, laid out, or expended, in carrying on the affairs of the ſociety, or after payment thereof, ſhall have been inveſted in the public funds or on other ſecurities, or have been divided amongſt the members of the ſaid ſociety, and in what other manner the ſame and every part thereof ſhall have been applied and diſpoſed of: and the ſaid treaſurer ſhall

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have and be allowed for ſuch clerk ſuch moderate and reaſonable allowances, out of the joint eſtate and effects of the ſaid ſociety, as the ſaid committee for the time being, or ſuch major part of them as aforeſaid ſhall approve and appoint.

Annual account to be made out.

AND it is hereby further agreed, by and between the ſaid parties to theſe preſents, that the ſaid committee and treaſurer for the time being, ſhall on the ſaid firſt Monday in —— in every year, at the meeting of the ſaid ſociety, produce, ſhow forth, and give up a full, juſt, and true account in writing, of all their tranſactions, receipts, and payments reſpectively, which ſhall be fairly entered in ſeparate books to be provided for that purpoſe, together with a particular account, ſtatement, or inventory, of all the capital and other ſtock, debts, and effects then belonging or owing to the ſaid ſociety, and of all debts and duties then due and owing by or from the ſaid ſociety on account thereof or otherwiſe, ſo as that the true ſtate of the ſaid ſociety and its affairs may manifeſtly appear. And alſo ſhall and will when thereunto required by the major part of the proprietors preſent at any general meeting, (ſuch majority being compoſed of at leaſt three-fourths in number of the members then preſent) cauſe a true and juſt valuation to be made of all the particulars included therein, in order to aſcertain the net amount or value of the ſaid eſtate and effects of the ſaid ſociety and of each member or proprietor's

ſhare thereof and therein, which ſaid account, ſtatement, inventory, and valuation, when allowed and approved of by the ſaid proprietors reſpectively or ſuch major part of them as aforeſaid, by writing under their reſpective hands, at the foot of the ſame ſhall be a ſufficient diſcharge and ſufficient diſcharges and indemnities to ſuch committee, and alſo to ſuch treaſurer for the time being, upon he the ſaid treaſurer thereupon anſwering and making good the balance of ſuch yearly account, and paying over the ſame to ſuch perſon who ſhall be choſen treaſurer for the year next enſuing, or in ſuch other way and manner as the ſaid proprietors, or the major part of them, ſhall in that behalf approve and direct, and that at or after the finiſhing and adjuſting of every ſuch yearly account, the ſeveral members of the ſaid ſociety, ſhall receive ſuch dividends out of the clear and net gains of the ſaid ſociety, as the committee for the time being of the ſaid ſociety, or the major part of them ſhall judge expedient, (the ſame being in proportion to their reſpective ſhares therein) and upon receipt thereof each and every of the ſaid members, ſhall ſign and depoſit with the treaſurer of the ſociety for the time being, a proper and ſufficient acknowledgement, releaſe and diſcharge, of and for the ſum or ſums he ſhall ſo receive, the ſufficiency of ſuch acknowledgement, releaſe or diſcharge, to be determined upon in caſe of diſpute, by the major part in

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number of the members then preſent. And further that the aforeſaid books, together with all bills, letters, acquittances, and other writings, touching or concerning the ſame, or relating to the affairs of the ſaid ſociety, ſhall always remain open and extant in the farm houſe of the ſaid ſociety, or other convenient place where the affairs of the ſaid aſſociation, ſhall be carried on or conducted, to which ſaid bills, letters, acquittances and other writings, and every or any of them, each of the ſaid parties ſhall and may at all reaſonable times, have free acceſs in the preſence of the treaſurer, ſecretary, or any one of the committee of the ſaid ſociety, for the time being, and read, peruſe and copy out the ſame or any of them, at his or their free will and pleaſure, without the let or hindrance of the other or others of them.

How Books of the ſociety to be kept.

And it is hereby further agreed, by and between the ſaid parties to theſe preſents, that in caſe the treaſurer, ſecretary, or either of the ſuperior agents, or ſuperintendants of the ſociety, or any member of the ſaid committee, for the time being, ſhall happen to die, or ſhall neglect or refuſe to take upon himſelf, or to continue to act in the ſaid office, or act contrary to the truſt in him or them reſpectively repoſed; then and in every ſuch caſe, the major part of the committee, for the time being, ſhall and may remove ſuch ſecretary, treaſurer, or other officer, and member or members of the committee, acting contrary to his or their truſt

Removal of officers.

as aforeſaid, and elect and chooſe any other perſon to be ſecretary, treaſurer, or other officer to ſupply the place of him or them ſo removed, dying, neglecting, or refuſing to ſerve, or act, or making default as aforeſaid. PROVIDED further that in caſe any doubt, queſtion or difference of opinion ſhall at any time ariſe or happen, relative to the proper conſtruction, or true intent or meaning of theſe preſents, or of any covenant, clauſe, matter or thing therein contained, the ſame ſhall at any time or times at the diſcretion of the committee of the ſociety, for the time being, if ſuch doubt or queſtion ſhall ariſe with ſuch committee, if not, then by requiſition in writing, under the hands of any of the members of the ſaid ſociety, to be made and delivered to ſuch committee, at any one of their ſittings, be referred to a ſpecial general meeting of the members of the ſaid ſociety, to be convened for that purpoſe. AND further that any member of the ſociety, ſhall be at liberty, without any ſuch previous requiſition made, to propoſe any doubt or queſtion, at any annual, or any other convened general meeting of the ſaid ſociety, and the deciſion of the ſociety thereupon, by a majority of three-fourths of the members then preſent, ſhall be final and concluſive on the member or members, with or by whom any ſuch doubt or queſtion, or doubts or queſtions ſhall have been made, and alſo on and relative to the ſubject, matter, or thing reſpecting

Diſputes to be referred to a general meeting.

CLERKSHIP.

which such doubt, question, or difference of opinion shall have arisen. PROVIDED lastly, and it is hereby further declared and agreed, by and between the several parties hereto, that it shall at all times be lawful for the said society, (at a full meeting of the members thereof, consisting of three-fourths at the least of the members constituting the said society, and in which not less than three-fourths of the members then present, shall be considered as constituting a majority) to alter, vary, or annul all, any, or either of the provisos, covenants, clauses, or agreements in these presents contained, and all, or any, or either of the rules, orders, and regulations, made or adopted by any committee of the said society, for the time being, and after such alteration, variation, or annulment, shall have been effected, then and from thenceforth all and every the members of the said society, their heirs, executors and administrators, and every of them shall be thenceforth absolved and freed from the former original, or previously subsisting covenants, clauses, provisos, and agreements, rules, orders, or regulations, as shall be by the new or altered covenants, clauses, provisos, and agreements, rules, orders, and regulations, substituted in the room thereof, any thing in these presents, or in any such previously subsisting rules, orders, or regulations contained to the contrary thereof, in any wise notwithstanding.

Power to alter the rules of the society.

CLERK-SHIP.

Articles of Clerkſhip *to an* Attorney *and* Solicitor, *the Father of the Young Gentlemen being party.*

ARTICLES of Agreement indented, had, made, covenanted, concluded, and agreed the 21ſt day of *October*, in the 29th year of the Reign of our ſovereign Lord George the Third, &c. &c. and in the year of our Lord, 1789, BETWEEN *E. B.* of — of the one part (*the maſter*) and *T. B.* the elder, of — (Father of the intended clerk) and *T. B.* the younger, of —— (*the clerk*) of the other part (*a*). FIRST, the ſaid *E. B.* (*the maſter*) in conſideration of the ſervice of the ſaid *T. B.* the younger as his clerk, to be done and performed as

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(*a*) As infants (or perſons under the age of 21 years) cannot bind themſelves apprentice, ſo as to ſubject themſelves to an action for breach of covenant, &c. it is proper for the ſecurity of the maſter, that the father, or ſome other friend of the infant, ſhould be bound for the faithful diſcharge of his articles. See Brand *v.* Ewington, *Doug.* 518. 1 *Eq. Ca. Ab.* 6. But though an infant cannot bind himſelf ſo as to intitle his maſter to an action for breach of any of the clauſes in the indenture, yet if he do in fact bind himſelf, it ſhould ſeem, upon the principle before adverted to ante p. 10, that he will not be permitted to avoid a compact deliberately entered into by him, and evidently for his benefit. See Rex. *v.* Hindringham, 6 *Durnf. E. Rep.* 557. Aſhcroft *v.* Aſhcroft, *Ibid.* 652. Should however, he bind himſelf for a term which will not expire till after he attain the age of 21 years, he will, notwithſtanding his indentures, be intitled to be diſcharged, on his attaining that age. *Ex. Par. Davis*, 6 *Durnf. & E. Rep.* 715.

CLERKSHIP.

hereinafter mentioned, and of the covenants and agreements hereinafter in theſe preſents, expreſſed and contained on the reſpective parts, and behalf of the ſaid *T. B.* the elder, and *T. B.* the younger, and each of them and their reſpective heirs, executors, and adminiſtrators, to be done, performed, fulfilled, and kept, according to the true intent and meaning of theſe preſents, and alſo in conſideration of the ſum of 100l. to him, the ſaid *E. B.* paid (*b*) by the ſaid *T. B.* the elder, at or before, &c. the receipt whereof, &c. likewiſe in conſideration of the 10 further ſeveral ſums of money hereinafter mentioned and covenanted, to be paid by the ſaid *T. B.* the elder, his heirs, executors, or adminiſtrators, unto the ſaid *E. B.* or his aſſigns, on the days and times hereinafter expreſſed, on the contingency or event hereinafter mentioned, he, the ſaid *E. B.* for himſelf, his heirs, executors, and adminiſtrators, doth covenant, promiſe, and agree to and with the ſaid *T. B.* the elder, his executors and adminiſtrators, and alſo to and with the ſaid *T. B.* the younger, (*c*) in manner following, that is to ſay, that he, the ſaid *E. B.* ſhall and will from henceforth, for and during the term of five years, from hence next enſuing, entertain and receive the ſaid *T. B.* the younger, as his clerk, and ſhall and will, during

Covenant to find both victuals and lodging.

(*b*) See 8 *Ann.* c. 9. 34 *Geo.* 3 c. 14 & 7 *Durnf.* & *E. Rep.* 121.

(*c*) See ante, p. 10.

that time, find and provide for the ſaid *T. B.* the younger, neceſſary and convenient meat and drink, and alſo a place to lodge and ſleep in (ſave and except in the time of ſickneſs of the ſaid *T. B.* the younger during the ſaid term, when ſuch meat and drink and place to lodge and ſleep in, is to be found and provided by the ſaid *T. B.* the elder, his heirs, executors, or adminiſtrators, at his and their own coſts, charges, and expences.) AND alſo, that he, the ſaid *E. B.* ſhall and will, during the ſaid term of five years, teach and inſtruct the ſaid *T. B.* the younger, in the knowledge and practice of the law, in the courts at *Weſtminſter*, as an attorney and ſolicitor, in ſuch manner as he, the ſaid *E. B.* now practiſes and profeſſes. ALSO it is agreed, between the ſaid parties hereto, and the ſaid *T. B.* the elder, and *T. B.* the younger, for themſelves ſeverally, and for their ſeveral heirs, executors, and adminiſtrators, do, and each of them, doth covenant, promiſe, and agree to and with the ſaid *E. B.* his executors, and adminiſtrators, by theſe preſents in manner following, that is to ſay, That the ſaid *T. B.* the younger, ſhall and will from henceforth, for and during the ſaid term of 5 years, from hence next enſuing, and fully to be completed and ended, faithfully and diligently ſerve the ſaid *E. B.* as his clerk, and do and perform his buſineſs, honeſtly and faithfully, his ſecrets keep his lawful commands perform and obey, and not depart from his

CLERKSHIP.

To inſtruct clerk.

To ſerve maſter.

CLERKSHIP.

said master's service, at any time, during the said term, without his said master's consent. And that the said *T. B.* the younger, shall not nor will in his said clerkship, act or practise as an attorney or solicitor in any of the Courts of Record at *Westminster*, or in any other court or courts of law or equity, whatsoever, nor make, draw, ingross, transcribe, write or copy, any deeds or conveyances, or do any other kind of business as an attorney, solicitor or scrivener, without the direction, privity or consent of the said *E. B.* his master. And further, that the said *T. B.* the younger, shall not nor will at any time or times during his said intended clerkship, waste, embezzle, or purloin any of his said master's goods or chattels, nor wilfully nor negligently, cancel, obliterate, spoil, lose, embezzle, lend, spend or make away with any of the books, papers, deeds, writings, monies, or other goods or chattels of the said *E. B.* his executors or administrators, or of any other person or persons delivered or committed to the custody or care of the said *E. B.* or of the said *T. B.* the younger, as his clerk, or on his said master's account. And that he the said *T. B.* the younger, shall and will at all times, when required, by the said *E. B.* his executors, administrators, or assigns, render, pay, or deliver unto him or them, all such monies, books, deeds, paper and writings, and other goods and chattels, as shall from time to time, or at any time, be delivered to the said *T. B.* the

Not to act as an attorney.

Not to waste, &c.

To deliver monies when required.

younger, by the ſaid *E. B.* his maſter, or which ſhall in any wiſe come to the hands or cuſtody of or be delivered to the ſaid *T. B.* the younger, on his ſaid maſter's account, during the ſaid term of his ſaid intended clerkſhip. CLERKSHIP.

AND the ſaid *T. B.* the elder, doth for himſelf, his heirs, executors and adminiſtrators, further covenant, promiſe and agree to and with the ſaid *E. B.* his executors and adminiſtrators, by theſe preſents, in manner and form following (that is to ſay,) that he the ſaid *T. B.* the elder, his heirs, executors or adminiſtrators, ſhall and will at his and their own coſts, charges and expences, find, and provide for the ſaid *T. B.* the younger, from time to time, and at all times during the ſaid term of 5 years, all neceſſary and convenient clothes and apparel ſuitable to his degree and profeſſion, and the mending the ſame, and alſo cleaning his boots and ſhoes, and likewiſe waſhing and ironing of his linen, and other things relative to his clothes and apparel, and alſo lodging; the ſaid *E. B.* finding and providing a place only for the ſaid *T. B.* the younger, to lodge and ſleep in (ſave and except in the time of ſickneſs of the ſaid *T. B.* the younger, during the ſaid term, when the ſame is to be found and provided by the ſaid *T. B.* the elder, his heirs, executors, and adminiſtrators). AND likewiſe in caſe of ſickneſs of him the ſaid *T. B.* the younger, during the ſaid term of 5 years, that he the ſaid *T. B.* the Father to find clothes. As to ſickneſs.

CLERKSHIP.

elder, his heirs, executors or adminiſtrators, ſhall and will at his and their own coſts, charges, and expenſes, take care of the ſaid *T. B.* the younger, during ſuch ſickneſs, and find, and provide him with meat and drink, and a place to lodge and ſleep in, during the ſame ſickneſs. AND alſo the ſaid *T. B.* the elder, doth for himſelf, his heirs, executors, and adminiſtrators, further covenant, promiſe and agree, to and with the ſaid *E. B.* his executors and adminiſtrators, by theſe preſents, that he the ſaid *T. B.* the elder, his heirs, executors or adminiſtators, ſhall and will, well and truly pay, or cauſe to be paid, unto the ſaid *E. B.* or his aſſigns, the ten ſeveral further ſums of money herein after mentioned, on the days and times herein after expreſſed, (that is to ſay,) the the ſum of ——— of lawful money of Great Britain, on the ——— day of ——— next, and enſuing the date of theſe preſents, the further ſum of ——— of like lawful money, on the ——— day of ——— alſo, next enſuing the date of theſe preſents, the further ſum of ——— of like lawful money, on the ——— day of ——— which will be in the year of our Lord ——— (the like ſeveral other ſums of ——— to be paid half yearly in the ſame manner) if the ſaid *E. B.* and *T. B.* the younger, ſhall be both living on ſuch reſpective days, but not otherwiſe, as and for the reſidue, and in full diſcharge of the conſideration monies above mentioned. AND alſo that he the

To pay ſums.

To pay duty

ſaid *T. B.* the elder, his heirs, executors or adminiſtrators, ſhall and will within the time appointed by the act or acts of parliament, in that behalf made and enacted, well and truly pay or cauſe to be paid to his Majeſty's revenue of the ſtamp duties, the tax or duties impoſed upon monies (*a*) or other things given with clerks or apprentices (*b*) and indemnify and ſave harmleſs the ſaid *E. B.* his heirs, executors and adminiſtrators, and his and their goods, chattels, lands and tenements, of and from the ſaid duties in every reſpect whatſoever, and all fines, forfeitures, and other conſequences which ſhall or may happen, or be forfeited or incurred, by reaſon, means, or on account of the non-payment, or neglect of payment of the ſame duties within the time aforeſaid. In Witness, &c.

CLERKSHIP.

upon monies given with clerks, or apprentices.

(*a*) See 34. Geo. 3. c. 14.—The duties payable on premiums are regularly payable by the maſter. Hence the neceſſity of the above clauſe when a contrary agreement is made between the parties.

(*b*) See 7. Durn. and E. Rep. 732.

APPRENTICESHIP.

Articles of Apprenticeſhip, *with many ſpecial Proviſos.*

THIS INDENTURE, made the — day of —— (*a*) BETWEEN *J. R.* of the city of —— being above the age of 14 years, that is to ſay, of the age of 14 years and one month complete, (*b*) (*the apprentice*) of the one part, and *W. C.* of —— (*the maſter*) a freeman of the city of —— of the other part, WITNESSETH, That the ſaid (*apprentice*) of his own free will and accord, teſtified by his ſealing and delivering theſe preſents, hath put and bound himſelf apprentice (*c*) to the ſaid (*maſter*) to be taught and inſtructed in the ſeveral trades, buſineſſes, or employments of an —— and a — from the day of the date of theſe preſents, unto the full end and term of 5 years from thence next enſuing.

(*a*) By 4 *Eliz. c.* 4. articles of apprenticeſhip muſt be by *Indenture*; and by 8 *Ann. c.* 9, the Indenture muſt bear date the day on which it is executed.

(*b*) By the cuſtom of *London*, an infant unmarried, and above the age of 14, may bind himſelf apprentice to a *freeman* of *London* by indenture, and will be bound by his covenants, as if of full age. See 2 *Bulſt.* 192. 1 *Mod.* 271. 2 *Keb.* 687. *Moor.* 136. And in all caſes, the apprentice muſt himſelf be a party, and ſign the indentures, even though he be put out by his parent. 1 *Salk.* 479.

(*c*) As to the neceſſity of the apprentice being expreſsly named as ſuch in the indentures, ſee *Bur. Set. c.* 272, 290. and 31 *Geo.* 2. *c.* 11.

AND that the ſaid (*maſter*) in condition of the ſum of —— (*a*) of good and lawful money of *Great Britain*, to him in hand well and truly paid by ſaid (*apprentice*,) at or before the ſealing and delivery of theſe preſents, the receipt whereof the ſaid (*maſter*) doth hereby acknowledge, and of and from the ſame, and every part thereof, doth acquit and diſcharge the ſaid (*apprentice*,) his executors, adminiſtrators, and aſſigns, by theſe preſents, hath teſtified by his ſealing and delivery hereof, agreed to take and accept of the ſaid —— as his apprentice during the ſaid term of five years. AND ſaid (*apprentice*) doth hereby covenant, promiſe, and agree, to and with ſaid (*maſter*,) his executors and adminiſtrators, that he the ſaid (*apprentice*,) ſhall and will, during all the ſaid term, well and truly ſerve ſaid (*maſter*) as an apprentice in the ſaid trades or buſineſſes of an —— and a ——, diligently attending to the buſineſs and concerns of his ſaid maſter, from the hour of eight o'clock in the morning until the hour of ſix o'clock in the evening, ſave and except an interval of two hours, which is to be allowed the ſaid (*apprentice*) to dine: doing no damage or injury to his ſaid maſter, nor knowingly ſuffer

APPRENTICESHIP.

Covenant by the apprentice to ſerve faithfully.

(*a*) The premium muſt be faithfully ſet forth in the indenture, and in words at length, and the duty paid upon it by the maſter, 8. Ann. c. 9, 9. Ann. c. 20, and 20. Geo. 2. c. 45, and ſee 7 Term. Rep. 121. ib. 732.

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the ſame to be done without acquainting his ſaid maſter thereof; but ſhall and will in all reſpects acquit and demean himſelf as an honeſt and faithful apprentice ought to do. AND ſaid (*maſter*) doth hereby for himſelf, his executors, and adminiſtrators, covenant, promiſe, and agree, to and with ſaid (*apprentice*,) his executors, adminiſtrators, and aſſigns, in manner following, (that is to ſay,) that he the ſaid (*maſter*,) according to the beſt of his power, ſkill, and knowledge, ſhall and will, during the ſaid term of five years, teach and inſtruct, or cauſe to be taught and inſtructed, the ſaid (*apprentice*,) in the ſeveral trades, buſineſſes, or employments, of an — and a —, and in all things whatſoever incident and belonging thereto, in ſuch manner as he ſaid ——— now, or at any time hereafter during the ſaid term, ſhall uſe or practiſe the ſame. AND further, that he ſaid (*maſter*) ſhall and will well and truly pay, or cauſe to be paid unto the ſaid (*apprentice*), or his aſſigns, during ſaid term of 5 years, or during ſo much thereof, as the ſaid (*apprentice*) ſhall continue his apprentice as aforeſaid, the ſeveral ſums of money, and chargeable at the ſeveral times herein after mentioned, in lieu and full ſatisfaction of the board and lodging of ſaid (*apprentice*) during the ſaid term, (that is to ſay,) the ſum of ——— of lawful money of *Great Britain*, for the firſt year of the ſaid term, the ſum of ——— of like lawful money, for the ſecond year

Covenant by the maſter to teach the buſineſs.

Maſter to pay the apprentice an annual ſum in lieu of board.

of the ſaid term, the ſum of 45l. of like lawful money, for the third year of the ſaid term, and the ſum of 50l. for the 5th and laſt year of the ſaid term, (unleſs the ſaid apprenticeſhip be ſooner determined, at ſuch requeſt of the ſaid (*apprentice*) as is hereinafter mentioned, in which caſe, the ſaid ſum of 50l. laſt mentioned, ſhall not be paid or payable) together with a proportionable part of either of the ſaid ſums, which may happen to be due at any ſooner determination of the apprenticeſhip, to be computed from the laſt quarterly day of payment thereof up to the day of ſuch determination, the ſaid 100l. and reſpective ſums of 35l. 40l. 45l. and 50l. to be paid and payable by five equal quarterly payments, on the 25th day of *Dec.* 25th day of *March*, 24th day of *June*, and 29th day of *September*, in every year, the firſt payment thereof (or of ſuch proportionate part of the ſaid ſum of £35, as ſhall be then due) to begin and be made on the 25th day of *December* now next enſuing, the ſame to be free and clear of all manner of deductions whatever, which ſaid ſeveral and reſpective ſums of £35, £40, £45, and £50, the ſaid (*apprentice,*) doth hereby for himſelf, his executors, adminiſtrators, and aſſigns, covenant and agree, to and with the ſaid (*maſter,*) his executors, and adminiſtrators, to take and accept in lieu of and in full ſatisfaction for his board and lodging, during the ſaid term as aforeſaid. AND moreover the ſaid (*maſter,*) doth hereby for himſelf his ex-

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Covenant by maſter to return a propor-

APPRENTICESHIP. ecutors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid *(apprentice,)* his executors, adminiſtrators, and aſſigns, that if the ſaid *(apprentice,)* ſhall happen to depart this life at any time within twelve calendar months, to be accounted from the date of theſe preſents, he the ſaid *(maſter,)* his executors, or adminiſtrators, ſhall and will return and pay unto the executors, adminiſtrators, or aſſigns of the ſaid *(apprentice,)* £50 of the ſaid ſum of £150 paid by the ſaid *(maſter,)* as aforeſaid. AND further, that he the ſaid *(maſter,)* his executors, adminiſtrators, or aſſigns, will not require or call upon the ſaid *(apprentice,)* to attend to the buſineſs or concerns of the ſaid *(maſter,)* his executors, adminiſtrators, or aſſigns, any more than eight hours in one and the ſame day, namely, from the hour of eight o'clock in the morning, until the hour of ſix o'clock in the afternoon, as is herein-before expreſſed, unleſs the ſaid *(apprentice,)* unavoidably be longer engaged about the proper buſineſs of the ſaid *(maſter,)* out of his office or accounting houſe, and in caſe the ſaid *(apprentice,)* ſhall be ſo employed, it is hereby declared and agreed, that all extraordinary expences which he ſhall neceſſarily be put to on ſuch account, ſhall be borne and paid by the ſaid *(maſter,)* his executors, adminiſtrators, or aſſigns. AND ſaid *(maſter)* doth hereby for himſelf, his executors, and adminiſtrators, ſue, covenant, promiſe, and declare, to and

tion of the premium if he die within a given period.

Apprentice not to attend more than a certain number of hours.

Apprentice to be at liberty to quit his maſter at the end of 4 years.

with the ſaid (*apprentice,*) his executors, and adminiſtrators, that he will permit and ſuffer ſaid (*apprentice,*) if he ſhall think fit and require it, freely to depart from and leave the ſervice of him the ſaid (*maſter,*) his executors, adminiſtrators, or aſſigns, at the expiration of the term of four years, of the ſaid term of five years, herein-before mentioned, and uſe and employ the remaining year of his ſaid apprenticeſhip, to his own benefit and advantage, when and as he ſhall think fit, without any hindrance or moleſtation of or by the ſaid (*maſter,*) his executors, adminiſtrators, or aſſigns, or either of them, upon expreſs condition nevertheleſs, that the ſaid (*apprentice,*) ſhall not in that caſe claim any part of the ſaid ſum of £50 herein-before ſtipulated to be paid by the ſaid (*maſter,*) for the fourth year of his apprenticeſhip, theſe preſents or any thing therein contained to the contrary thereof in any wiſe notwithſtanding. AND it is hereby mutually agreed and declared, by and between the parties to theſe preſents, that in caſe the ſaid (*maſter,*) ſhall happen to die before the end of the apprenticeſhip of the ſaid (*apprentice,*) that then and in ſuch caſe the executors or adminiſtrators of him the ſaid (*maſter,*) ſhall and will, as ſoon as may be after his death, find and provide a new and other proper maſter, being an —— or ——, and at their own charge and without delay, turn over the ſaid (*apprentice,*) to ſuch new maſter, for the reſidue which ſhall be then

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Covenant by maſter that his executors ſhall on his deceaſe, provide apprentice with a new maſter.

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Penalty for performance of covenants. AND laſtly, for the true performance of the ſeveral covenants and agreements herein-before mentioned and contained, on the part of the ſaid (*maſter,*) his executors, and adminiſtators, to be taught, paid, done, and performed, in manner before mentioned, and according to the true intent and meaning of theſe preſents, he the ſaid (*maſter,*) (*a*) doth bind himſelf unto the ſaid (*apprentice,*) his executors, adminiſtrators, or aſſigns, in the penal ſum of £200 of lawful money of Great Britain, firmly by theſe preſents. In Witneſs, &c.

N. B. *Indentures of Apprenticeſhip, by the cuſtom of London, and ſome other places, muſt be enrolled, as to which, ſee alſo* 2 Roll. Abr. 405. 1 Mod. 271.

(*a*) This ſtipulation can only be on the part of the *maſter*, for an infant cannot make himſelf liable to the payment of a penalty. See ante. p. 10.

III. Agreements between Debtors and Creditors.

An Agreement between a Debtor and his Creditors, by which a Committee is appointed to inſpect his Affairs, and liquidate his Debts.

This Indenture of three parts, made ——— 1796, between (*Debtor*) of the 1ſt part, (*Committee of Creditors*), and who have been nominated at a general meeting of the creditors of the ſaid (*Debtor*) to conſtitute a committee of inſpection of the affairs of the ſaid (*Debtor*) of the ſecond part, and the ſeveral other perſons, &c. creditors of the ſaid (*Debtor*) of the third part. Whereas, the ſaid (*Debtor*) hath for ſeveral years paſt traded as a merchant and as a ſhip builder, and otherwiſe, to a very large and extenſive amount, and he is now poſſeſſed of a very conſiderable property, in ſhips, merchandiſe, debts, ſtock-in-trade, and in various docks, yards, houſes, lands, hereditaments, rents, and premiſes, real and perſonal. And whereas by reaſon of ſuch trading, and for carrying on the ſame, he the ſaid (*Debtor*) is become indebted unto them the ſaid (*Committee of Creditors*,) and to the ſeveral other perſons, his creditors, parties hereto of the third part, in various conſiderable ſums to a large amount, and he, the ſaid (*Debtor*)

Recital of buſineſs,

and of being indebted, and of propoſal for making ſale of landed property for payment of debts, &c.

CREDITOR is very deſirous to narrow his trading, and that his ſhips, merchandiſe, and debts, due and owing to him, and other his ſaid ſtock and effects, ſhould forthwith, and as ſpeedily as poſſible, be ſold, diſpoſed of, collected and turned into money, and that all his ſaid creditors, ſhould as ſpeedily as poſſible be paid and ſatisfied their full and whole debts, with intereſt: BUT it appearing, from the nature and extenſion of his trading and dealing, and of his eſtates and effects, that the ſame cannot be effected without time being allowed for that purpoſe, He, the ſaid (*Debtor*) called a meeting of his ſaid creditors, and ſuch meeting hath accordingly been had and held: and the ſaid (*Debtor*) then and there produced to his ſaid creditors, a ſtatement of debts owing by him, and alſo a ſtatement and valuation of his ſhips, merchandiſe, and debts due to him, and of his real and perſonal eſtates and effects, by which it plainly appeared, that the ſaid (*Debtor*) would poſſeſs, after the payment of all his ſaid debts with intereſt, a very large ſurplus property, and with ſuch ſtatement the ſaid creditors were well ſatisfied. AND at ſuch meeting, the ſaid (*Debtor*) propoſed that all his ſaid creditors, ſhould be paid and ſatisfied their full and whole debts with intereſt thereof reſpectively, within the ſpace of two years, from the day of the date of theſe preſents, and that his ſaid creditors ſhould permit and ſuffer him, the ſaid

(*Debtor*) to conduct and manage his said trade and affairs, estate and effects, during the said term of 2 years. And that the same should be so managed under the immediate inspection and controul of the said (*Committee of Creditors,*) and for that purpose, that a deed of inspection, and of licence and forbearance should be forthwith entered into, executed between them and by the necessary parties. And the said (*Debtor*) also proposed, that he would also secure all his said creditors, their full and whole debts with interest, upon and with his said freehold and leasehold estates, lands, hereditaments, and premises, and for that purpose that he, the said (*Debtor*) would make and execute unto them, the said (*Committee of Creditors*) a proper and effectual deed or deeds, covenant and assignment, of all his said freehold and leasehold estates, lands, hereditaments, and premises, upon certain uses and trusts, and subject to certain provisos, to be inserted in such deed or deeds of conveyance and assignment, as should be determined upon and consented to, and particularly upon trust in the first place, that he should be permitted, during the said term of two years, to collect and receive the rents and profits, thereof and therewith, pay and discharge the interest to grow due on the then existing mortgages upon and of his said estates, or any of them, or any part thereof, but that the said estates, and every of them should be subject to the said then existing mortgages, for security to

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CREDITOR. his ſaid ſeveral creditors, and each of them, for their full and whole debts and intereſt, and that the ſame ſhould be held by them, the ſaid (*Committee of Creditors,*) IN truſt, accordingly. And further, that in caſe the ſaid (*Debtor*) ſhould not pay and diſcharge to his ſaid ſeveral creditors, executing theſe preſents, their full and whole debts and intereſt, by or before the expiration of the ſaid term of 2 years, that then the ſaid truſtees ſhould have power to ſell and diſpoſe of abſolutely, the whole or any part of the ſaid freehold and leaſehold eſtates, hereditaments, and houſes, ſo to be conveyed, and aſſigned, and the equity of redemption thereof, and to receive the conſideration monies, and to make and perfect titles with or without ſanction of the ſaid (*Debtor*) and to apply the monies ariſing therefrom, in the firſt place, to the payment and diſcharge of the then exiſting mortgages, or ſo much and ſuch parts thereof, as ſhould then remain undiſcharged, and the intereſt thereon reſpectively, and the coſts and charges they reſpectively ſhall or may ſuſtain, expend, or be put unto, relating to the truſts aforeſaid, and in the next place, in the payment and diſcharge of all and every the debt and debts of the ſaid (*Debtor*) then remaining undiſcharged, to the ſeveral perſons, his creditors, parties to and executing theſe preſents, with intereſt on their reſpective debts, or on ſuch of them as ſhall bear intereſt. AND that in caſe of full ſatisfaction

having been made by the ſaid (*Debtor,*) to his ſaid CREDITOR
ſeveral creditors, purſuant to the ſpirit and intention of theſe preſents, then that the ſaid truſtees ſhould reconvey and reaſſign the ſame premiſes to the ſaid (*Debtor,*) his heirs, executors, and adminiſtrators, or to whom he ſhould direct or appoint, and with ſuch powers and proviſos, for the further management of, and dealing with the ſaid eſtates, hereditaments, and premiſes, as ſhould be agreed on and conſented to, and contained in ſuch deed of releaſe and aſſignment, touching the ſame.

Recital that creditors had acceded to the propoſal.

AND whereas, the ſaid creditors of the ſaid (*Debtor*) parties hereto, of the 2d and 3d part, having conſidered the ſaid propoſals and the reaſonableneſs thereof, they came to a reſolution, that the ſame ſhould be acquieſced in, and acceded to, and that the ſaid (*Debtor*) ſhould be permitted to collect and diſpoſe of, and manage and improve his eſtate and effects under the inſpection of the ſaid (*Committee of Creditors,*) for the ſaid term of two years, to be computed from the day of the date of theſe preſents, he, the ſaid (*Debtor,*) in the 1ſt place, complying with the terms of his ſaid propoſal, touching his ſaid freehold and leaſehold eſtates, as is laſt hereinbefore mentioned and ſet forth, and ſubject to the proviſos, &c. hereinafter expreſſed and contained. AND whereas the (*Debtor,*) hath by indenture of leaſe and releaſe, and aſſignment, the leaſe bearing date the day be-

CREDITOR fore, and the releaſe and aſſignment, even date herewith, and made between the ſaid (*Debtor*) of the one part, and the ſaid (*Committee of Creditors*) of the other part, fully complied with his ſaid propoſal, touching his ſaid freehold and leaſehold eſtate, to the ſatisfaction of his ſaid creditors, parties hereto, of the ſecond and third parts, all which, by reference thereto, may appear (*a*). Now THIS INDENTURE WITNESSETH, that in purſuance of the agreement aforeſaid, and for carrying the ſame into full effect, and for and in conſideration of the covenants hereinafter mentioned, on the part of the ſaid ſeveral creditors of the ſaid (*Debtor,*) parties hereto, of the ſecond and third parts, and for other conſiderations, him the ſaid (*Debtor*) moving. He the ſaid (*Debtor,*) doth hereby for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, grant, and agree, to and with the ſaid (*Committee of Creditors,*) and the ſaid ſeveral other perſons, his creditors, parties hereto, of the third part, their, his, and her, reſpective executors and adminiſtrators, in manner and form following, (that is to ſay,) the ſaid (*Debtor,*) ſhall and will, with all ſpeed, make up and ſtate a true and juſt account of all his trade, eſtate, debts, credits, and

Witneſs, that in purſuance of agreement, the debtor covenants to balance his accounts, &c.

(*a*) See the *releaſe* and *aſſignment* here referred to, poſt title RELEASE.

affairs, as well thoſe in partnerſhip between him and any other perſon or perſons, if any ſuch there be, as thoſe belonging to, or carried on by him alone, and balance the ſame account, ſo that a true and correct ſtate of his affairs may be manifeſt, and ſhall and will ſign the ſame, and deliver a copy thereof, ſo ſigned, unto the ſaid (*Committee of Creditors,*) ſome or one of them. AND that he the ſaid (*Debtor,*) ſhall and will, until his creditors ſhall be fully paid and ſatisfied, as after mentioned, employ himſelf, and uſe his beſt endeavours in and about the management, and collecting, receiving, ſettling, and liquidating all his trade, eſtates, goods, wares, merchandiſes, ſhips, debts, and effects, and ſhall and will turn into money, with all convenient ſpeed, all the ſaleable part of his ſhips and merchandiſe, in hand, or to ariſe or come to hand, and ſhall and will thereupon, and ſo from time to time, as ſoon as the monies to be made thereof ſhall be had and received, pay and depoſit the ſame into the hands of (*Bankers,*) or into the hands of ſuch other banker or bankers as the ſaid committee of inſpection hereinbefore named, of the ſecond part, or the majority of them, at any of their meetings, ſhall direct, and that all ſuch payments and depoſits ſhall be made in the joint names of the ſaid (*Debtor*) and the ſaid (*committee of inſpection.*) And that he the ſaid (*Debtor,*)

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and convert his effects into money.

and pay the produce into banker's hands.

CREDITOR ſhall not, nor will until all his ſaid creditors ſhall be lawfully paid, or until this deed ſhall be otherwiſe rendered null and void, open, or be concerned in any new trade or trades, or commercial, or other concerns, or contract any new or other debt or debts, other than ſuch as in the nature of the trade ſo to be managed, may be unavoidable, without the conſent, in writing, of the ſaid committee of inſpection, or the major part of them. And alſo that the ſaid (*Debtor*) ſhall and will keep proper books of account, and ſhall therein cauſe to be entered a fair, juſt, and regular account of all his ſaid trade and tranſactions, and of all receipts and payments had or made by him touching the ſame. And that all ſuch books of account, and every of them, ſhall be produced and open for the inſpection of them the ſaid (*Committee of Creditors,*) at all and every their meetings, as after mentioned. And alſo, that he the ſaid (*Debtor,*) ſhall and will, every three months, if the ſaid committe of inſpection ſhall require the ſame, until his ſaid creditors ſhall be fully ſatisfied, or until this deed ſhall be otherwiſe rendered null or void, make up and balance all ſuch accounts, ſo as thereby the true ſtate of his affairs may be manifeſt. AND further, that it ſhall and may be lawful for the ſaid committee of inſpection, parties hereto, of the ſecond part, or for the majority of them, to nominate and appoint one clerk or ac-

Debtor not to enter into new ſpeculations.

Keep regular accounts.

Committee authorifed to nominate a clerk to make up the account, &c.

comptant to manage and conduct (in conjunction with the ſaid (*Debtor*,) and ſuch other clerk or clerks, for the time being, as he the ſaid (*Debtor*) may think neceſſary to employ in the buſineſs and accounts of the ſaid trade and concerns of the ſaid (*Debtor*). And that ſuch clerk or accomptant ſo to be employed by the ſaid committee of inſpection, ſhall be paid by the ſaid (*Debtor*,) ſuch ſalary as ſhall be agreed upon to be given to the ſame clerk and accomptant between him and the ſaid committee. And furthermore, that he the ſaid (*Debtor*) ſhall not nor will at any time or times hereafter, make any undue payment, or give any undue preference to any or either of his creditors, or to or for their or any or either of their reſpective uſe or uſes (*a*), ſave, as hereinafter is provided for, or make or give to any or either of his ſaid creditors, or any other perſon or perſons, on their, or any or either of their accounts, or for their or either of their uſes, any ſecurity or ſecurities, for the debt or debts of any ſuch creditor or creditors, or any part thereof, beyond ſuch ſecurity or ſecurities which any ſuch creditor or creditors may now have or poſſeſs, or than is given and provided in and by the ſaid indenture of releaſe or aſſignment of even date herewith hereinbefore mentioned.

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Debtor not to give preference to any particular creditor.

(*a*) See ante. p. 32.

CREDITOR AND that he the ſaid (*Debtor*) ſhall and will well and truly pay, or cauſe to be paid, unto each and all and every his ſaid creditors, parties hereto, their reſpective heirs, executors, adminiſtrators, or aſſigns, or other perſon or perſons duly authoriſed to receive the ſame, their full and whole debts, together with lawful intereſt for the ſame in lawful money of *Great Britain*, by or before the expiration of the ſaid term of two years, and in the manner and in the proportions hereinafter provided. AND THIS INDENTURE WITNESSETH, that in purſuance and performance of the ſaid agreement on their parts, and for and in conſideration of the covenants hereinbefore entered into, and deeds executed by and on the part and behalf of the ſaid (*Debtor,*) and of the proviſos and conditions hereinafter contained, and for and in conſideration of the confidence in, and good opinion they have of the ſaid (*Debtor,*) and for other conſiderations, they the ſaid (*Committee of Creditors,*) and the ſeveral other perſons whoſe hands and ſeals are hereunto ſet and affixed by themſelves, or by their attorney or attornies, or other perſon or perſons, duly authoriſed ſo to do, for themſelves ſeverally and reſpectively, and for their ſeveral and reſpective heirs, executors, and adminiſtrators, partners, agents, conſtituents, and aſſigns, and not jointly, or any one of them, for any other or others of them, but each of them for himſelf, and for his heirs, executors, and ad-

Debtor engages to pay the creditors within the time limited.

Farther witneſs that the committee and other creditors engage to receive their debts conformably to the preſent arrangement.

miniſtrators, agents, and aſſigns, do and doth co- CREDITOR
venant, promiſe, grant, and agree, to and with the
ſaid (*Debtor,*) his executors and adminiſtrators, by
theſe preſents, in manner and form following viz.
that they the ſaid (*Committee of Creditors,*) and
the ſaid ſeveral other creditors parties hereto, of
the third part, and every of them reſpectively, and
their reſpective heirs, executors, adminiſtrators,
partners, and aſſigns, ſhall and will take and
receive their ſaid, ſeveral, and reſpective debts, ſo
now due and owing to them from the ſaid (*Debtor,*)
and the intereſt thereon reſpectively, in the way
manner and proportions, and at the times, in and
by theſe preſents pointed out arranged, and agreed
on, for the payment thereof (*a*). And that until
breach ſhall be made by the ſaid (*Debtor,*) in per-
formance of the covenants and agreements afore-
ſaid, and the proviſos hereinafter contained, on his
part to be performed, or until this deed ſhall
otherwiſe become null and void, it ſhall and may
be lawful to and for the ſaid (*Debtor*) to carry
on, conduct, and manage his ſaid trade and con-
nections, and every of them, and ſell and diſpoſe
of all his merchandiſe, ſhips, ſtock, and effects
in trade, receive, collect, and get in, all his debts

Debtor to continue to carry on his buſineſs.

(*a*) As to the effect of covenants by creditors to compound with the debtors, when all the creditors are not parties. See *Heathcote* v. *Crookſhanks*, 2 *Durn & E. Rep.* 21.

CREDITOR and effects, provided the ſame be ſo managed, concluded, diſpoſed of, and collected for the general benefit of the ſaid creditors, parties hereto, and of him the ſaid (*Debtor,*) under the inſpection, and ſubject to the controul of the ſaid (*Committee of Creditors,*) or the committee of inſpection for the time being, as in the proviſos hereinafter contained is mentioned and ſet forth. AND further, that they the ſaid (*Committee of Creditors,*) and the ſaid ſeveral other creditors of the ſaid (*Debtor,*) parties hereto, of the third part, or any or either of them reſpectively, their or any or either of their heirs, executors, adminiſtrators, partners, agents, or aſſigns, reſpectively, ſhall not, nor will ſo long as the ſaid (*Debtor*) ſhall obſerve, perform, and fulfil, the covenants and agreements herein contained on his part, nor until this deed ſhall become null and void, as hereinbefore and hereinafter mentioned, ſue, arreſt, moleſt, or attach, or proſecute the ſaid (*Debtor,*) his executors or adminiſtrators, or his or their bodies, goods, chattels, lands or tenements, or interrupt, moleſt, or hinder, him or them in the management of his eſtate and effects, for the benefit of his ſaid creditors, under the inſpection and controul, and in manner aforeſaid, according to the true intent and meaning of theſe preſents; or hinder, impede, or interrupt him the ſaid (*Debtor,*) from going, paſſing, repaſſing, abiding,

The creditors not to ſue or moleſt the debtor.

and continuing, to, from, and at all or any place or places where the nature of his affairs may require, in the kingdom of *Great Britain*. And if any ſuch action, ſuit, arreſt, attachment, or other proceeding, ſhall be ſo commenced, had, or proſecuted, contrary to the true ſpirit, intent, and meaning, of theſe preſents, that then, and in ſuch caſe, the ſame ſhall operate, and be, to all intents and purpoſes, a releaſe and acquittance to the ſaid (*Debtor*,) his heirs, executors, and adminiſtrators, of the debt and debts, ſum and ſums of money then due to ſuch creditor or creditors, reſpecting his or their heirs, executors, adminiſtrators, partners, and aſſigns, who ſhall ſo ſue, arreſt, attach, or moleſt, the ſaid (*Debtor*,) his executors or adminiſtrators, lands or tenements, in manner aforeſaid, contrary to the true meaning hereof. And that it ſhall be lawful for the ſaid (*Debtor*,) his executors and adminiſtrators to plead this deed in bar, in all caſes where actions or ſuits ſhall be commenced or inſtituted, contrary to the ſpirit thereof, and the ſame ſhall be an effectual bar to all and every ſuch actions; PROVIDED always, and it is hereby declared by and agreed, between all the ſaid parties hereto, and it is the true intent and meaning of the ſaid parties of theſe preſents, that they the ſaid (*Committee of Creditors*,) or the committee of inſpection, for the time being, or any of them, and they are hereby empowered and authoriſed ſo to do, to meet at the dwelling houſe of the ſaid (*Debtor*), or at any other place or places, as they, or the majority of them, ſhall from time to time appoint once in every month, to

CREDITOR.

Committee empowered to meet once a month.

CREDITOR. inſpect and examine the books and accounts of the (*Debtor*), and how, and in what manner he has conducted, or is conducting his trade and concerns, and how, to whom and in what manner, and for what purpoſes, he has paid or applied any monies come to his hands. AND that the ſaid committee of inſpection ſhall keep a book, and ſhall therein, at their ſeveral meetings, enter into, and minute the ſeveral proceedings, and give ſuch directions or advice, as they ſhall from time to time judge neceſſary to give to the ſaid (*Debtor*) for the management and carrying on the ſaid trade, and concerns, and ſuch receipts, payments and applications of the money thereto belonging, or therefrom ariſing as aforeſaid, as the circumſtances of the caſe, ſhall from time to time, in their judgment require, all which directions and advice, he the ſaid (*Debtor*) doth hereby for himſelf, his heirs, executors and adminiſtrators, covenant, promiſe, and agree, from time to time to follow and obſerve, the ſame not militating againſt the benefit of his eſtate, [*Proviſo in caſe of the death of ſaid* (Debtor) *before the end of two years, or incapacity to act in the management of his trade and concerns, then ſaid* (Committe of Creditors) *to act in the ſame, and in the ſame manner as the ſaid* (Debtor) *hereinbefore agreed to manage &c. the ſame.*] PROVIDED nevertheleſs, and it is hereby expreſsly declared and agreed, by and between all the ſaid parties hereto, that, it ſhall and may be lawful to and for the ſaid (*Debtor*) or the ſaid (*Committee of Creditors*) by, with, and out of the firſt monies ariſing, or to be raiſed and collected, from the eſtate, trade and effects of the ſaid (*Debtor*) to pay and ſa-

Small debts to be firſt paid

tisfy all ſuch his ſaid creditors whoſe reſpective debts ſhall not amount to the ſum of ——, AND alſo to pay ſuch charges, cuſtoms and exciſe duties, as may become payable on, or for any merchandiſe or goods imported or exported, and all charges of inſet and outſet of ſhips and veſſels employed in his ſaid trade and concerns, and all ſalaries, apprentices and journeymens wages, ſeamens wages, and other out-goings neceſſary to be paid in the courſe of carrying on, and conducting his ſaid trade and concerns, in manner aforeſaid, or for any timber or materials for the completing and finiſhing any ſhip or veſſel, now building or repairing, or neceſſary to be repaired, provided nevertheleſs, that the ſame be done, by and with the knowledge and conſent of the ſaid committee of inſpection for the time being, or of the majority of them, and for the general benefit of the ſaid creditors. PROVIDED further, and it is hereby alſo declared and agreed, by and between all the ſaid parties hereto, that it ſhall and may be lawful to and for the ſaid (*Debtor*) under the inſpection, and with the conſent and direction of the ſaid committe of inſpection, and which conſent they are hereby fully authoriſed and impowered to give out of the monies ſo as aforeſaid, to be raiſed, collected and paid into the bank, in the ſecond place to pay all and every his ſaid creditors parties hereto, of the ſecond and third parts, and whoſe debts reſpectively ſhall amount to —— and upwards, the intereſt due to them reſpectively upon and for their reſpective debts, and after payment of ſuch intereſt, then, when, and as often as a ſum ſufficient ſhall have been ſo

CREDITOR.

Alſo expences of the trade.

Then intereſt of larger debts.

And afterwards a poundage when ſufficient money in hand for the purpoſe.

CREDITOR. raiſed, collected, and depoſited, to pay all his ſaid creditors parties hereto, of the ſecond and third parts, the ſum of —— in the pound, upon their ſeveral and reſpective debts, that then the ſame ſhall be paid and divided between them, rateably and in proportion to each perſon's reſpective debts, and ſo from time to time as often as there ſhall be ſufficient monies collected and depoſited, to pay ſuch intereſt and dividends as the ſame ſhall be accordingly then forthwith paid and divided until the whole of the ſaid creditors of the ſaid (*Debtor*) parties hereto of the ſecond and third parts, ſhall have been fully paid and ſatisfied, their ſaid full and whole debts, and intereſt thereon reſpectively, or until this preſent deed ſhall otherwiſe be rendered null and void. PROVIDED further, that if all the ſaid creditors of the ſaid (*Debtor*) whoſe debts do reſpectively amount to more than ——— (except ſuch creditors as now hold or are poſſeſſed of any ſecurity, or ſecurities, loan, or depoſit for their reſpective debts, and alſo except ſuch and ſo many of them whoſe debts ſhall not amount together to the ſum of —) ſhall refuſe to execute, or otherwiſe conſent to this deed, or a duplicate thereof, within ſix months from the date hereof, that then and in ſuch caſe theſe preſents, and every thing herein contained, ſhall be void. AND it is further, provided that in caſe any dividend ſhall become due and payable by virtue hereof, before all ſuch creditors hereto have ſigned or conſented to this deed, according to the limitation of time hereinbefore mentioned, than then and in ſuch caſe the dividend, or the debt, or reſpective debts of ſuch creditor or

If the large creditors refuſe to come in, the deed to be void.

Dividend to be ſet apart for them till they determine.

creditors ſhall remain depoſited in the ſaid bank, and be paid to ſuch creditor or creditors, his, her, or their executors, adminiſtrators, conſtituents, or aſſigns, on his and their executing hereof, and ſo from time to time, and ſhall not be applied to any purpoſe whatſoever, (*a*). AND it is hereby further agreed, and declared, by and between the ſaid parties hereto, that in caſe of the death of either of them the ſaid (*Committee of Creditors*) before the ſaid creditors ſhall have been fully paid and ſatisfied their ſaid debts, or before this deed ſhall otherwiſe become null or void, or in caſe either of them ſhall refuſe or decline to act, then and in every ſuch caſe, it ſhall and may be lawful to and for the major part of the creditors of the ſaid (*Debtor*), who ſhall be preſent at a meeting to be held purſuant to a notice given for that purpoſe, to nominate, and chooſe ſuch other perſon or perſons as they ſhall think fit, to be an inſpector or truſtee, in the place or ſtead of ſuch party ſo dying, or refuſing or declining to act, and every ſuch perſon ſo to be choſen as aforeſaid, ſhall have the like power, authority, and controul, as either of them the ſaid inſpecting committee, herein before named, have or can, or may have by virtue of theſe preſents, and ſhall and may act in every reſpect to all intents and purpoſes, as the ſaid perſon or perſons in whoſe place or ſtead he or they ſhall be ſo nominated or appointed, might have done, if he or they were, or was living, or had not refuſed, or declined to act as aforeſaid. AND furthermore, it is hereby covenanted,

CREDITOR.

Proviſo for appointing new committees on death, &c. of the preſent.

Power for

(*a*) See Jackſon v. Lomas, 4 Durn. and E. Rep. 166.

CREDITOR.

committee to prolong the time for payment of the debts for a limited time.

granted, concluded, and agreed by, and between all the ſaid parties hereto, that if by any unforeſeen cauſe, not wilfully occaſioned by the ſaid (*Debtor*), ſuch delay in the winding up of the ſaid eſtate, concerns, and affairs of the ſaid (*Debtor*) ſhall be occaſioned ſo as to prevent or hinder the ſaid ſeveral creditors parties hereto, of the ſecond or third parts from having and receiving, and being paid their full and whole debts, and intereſt, by or before the expiration of the ſaid term of —— years, that then and in ſuch caſe, it ſhall and may be lawful to and for the ſaid (*Committee of Creditors*), or to, or for the committee of inſpection for the time being, or the majority of them, if they ſhall think proper, and they are hereby fully authoriſed and impowered ſo to do, by an indorſement or memorandum to be ſigned by them or the majority of them, upon the back of theſe preſents, or in their committee book for that purpoſe, to prolong the ſaid time, for the winding up of the affairs and concerns of the ſaid (*Debtor*) and for the payment of the ſaid ſeveral creditors in manner aforeſaid, for the further ſpace of three months, to commence and be computed from the expiration of the ſaid term of —— years herein before mentioned, and that without the further conſent or concurrence of the ſaid ſeveral creditors, parties hereto, of the ſecond and third parts, their executors, adminiſtrators, agents, partners, or aſſigns, and that thereupon all the ſaid creditors of the ſaid (*Debtor*) parties hereto, their executors, adminiſtrators, agents, partners, or aſſigns, ſhall be bound by the covenant, proviſos, licence and forbearance here-

in contained, given, and granted in the ſame, and in as full and ample a manner to all intents and purpoſes, as if the full term of —— years was herein inſerted and granted, in the firſt inſtance, [*Proviſo for ſaid (Committee of Creditors) or the committee of inſpection, to deduct and reimburſe themſelves coſts, &c. in preparing theſe preſents, or in their perſonal engagements, which they ſhall tranſact or enter into with a view to benefit the eſtate, or facilitate the diſtribution thereof, and in any wiſe reſpecting, &c.—And to be only charged and chargeable &c. for their own acts.*] AND further, that they and every of them ſhall at all times hereafter, ſtand fully exonerated, and indemnified by the ſaid (*Debtor*) his heirs, executors, and adminiſtrators, for all and every their lawful actings and doings in and about the ſeveral truſts, monies and things hereby provided for and in them, repoſed and confided. AND the ſaid (*Committee of Creditors*) and each and every of them, for himſelf, his heirs, &c. do, and each and every of them, doth hereby ſolely, and not jointly, covenant, promiſe and agree to and with the ſaid ſeveral other creditors of the ſaid (*Debtor*) parties, to and executing theſe preſents, and their reſpective executors, &c. and to and with each and every of them that they the ſaid (*Committee of Creditors*) ſhall and will, well and truly account for, pay and apply the monies to ariſe, and be by them received, and recovered, by, or from the ſaid premiſes, or the ſale thereof, or under the proviſos and truſts aforeſaid, or in virtue of theſe preſents upon and purſuant to the ends, intents and purpoſes hereinbefore expreſſed and declared, of and concerning the ſame, and the true intent and meaning of theſe preſents, in regard thereto. AND alſo

CREDITOR.

Indemnity to the committee.

Covenant by committee duly to account, &c.

CREDITOR. shall and will in case of their acting under the provisos aforesaid, if the death or illness of the said (*Debtor*) shall happen before this deed, shall become null and void, render and give unto the said (*Debtor*) his heirs, executors, administrators or assigns, a just account of all their actings and doings, in pursuance hereof, and of the powers and authorities hereby in them vested, and pay and render the surplus of all monies to be made, risen, gotten, had, and received by them, from the said estate and effects of the said (*Debtor*) hereby intended to be placed under their management and inspection, after payment to the said several and respective creditors of the said (*Debtor*) parties hereto, of the second and third parts of their full and whole debts, and interest, and of all costs and expences incurred in, and about the management and winding up of the said concerns, unto the said (*Debtor*) his executors, administrators and assigns, or as he or they should by deed, will, or writing, direct authorise and appoint. PROVIDED always nevertheless, and it is hereby declared and agreed, by and between all the said parties to these presents, that the concurrence of any person or persons who is, or are a mortgagee or mortgagees of all or any part or parts of the estates, lands, hereditaments and premises of the said (*Debtor*) by him proposed to be conveyed and assigned, as hereinbefore mentioned, and set forth, or who have, or hath any lien or liens on or affecting the same, or their being made parties to, and executing these presents, as creditors of the said (*Debtor*) shall not prejudice, lessen, or affect their mortgage or mortgages, lien or liens, or prior charge or

Concurrence of mortgagees, &c. not to affect their securities.

charges, or other, their interests, powers, or securities, of, or upon the said estates, lands, hereditaments and premises, so proposed and about to be conveyed and assigned in manner aforesaid, or any part or parts thereof, or any right or title which they may have to a priority of payment, or other benefit or advantage on account thereof. AND LASTLY, it is hereby concluded, declared and agreed, by and between all the said parties hereto, that it shall and may be lawful to and for the said (*Committee of Creditors*) or to or for the committee of inspection, for the time being, to pay to, or permit and suffer the said (*Debtor*) to pay to the said (*Bankers*), and for the said (*Bankers*) to have, receive, and retain out of the first monies to arise from the estate and effects of the said (*Debtor*) the full sum of —— being part of a larger sum of money advanced by them for the uses and purposes of the said estate of the said (*Debtor*) and for the management thereof, since, or a short time previous to the negotiation, for the carrying this deed of inspection, licence and forbearance into effect. AND that if any other matter, cause or thing whatsoever, shall hereafter arise, or be found necessary, touching the sale and disposition or collecting or dealing with the premises aforesaid, or for the carrying into execution the trusts and purposes of these presents, and the intent and meaning of the said several parties hereto, according to the spirit and true meaning hereof, and which is, or are not in and by these presents provided for or directed, that then and in all and every such case and cases, it shall and may be lawful to and for the said (*Committee of Creditors*) or the committee of inspection, for the time being,

CREDITOR.

Bankers empowered to retain part of debts due to them.

Discretionary power vested in the committee in respect of adventitious circumstances.

CREDITOR. to act and direct in all such new matters, causes or things, as they, or the majority of them, in their discretion shall think best, and most for the benefit of the said several creditors parties hereto, of the second and third parts, and of the said (*Debtor*) and the said trusts and premises, so from time to time as often as any such new matter, cause, or thing shall arise or be found necessary, any thing herein contained to the contrary thereof in anywise notwithstanding. In WITNESS. &c.

An Agreement for securing an Annuity, and the Arrears thereof by an Attornment of Tenants, Assignment of Bond, &c. &c. &c.

Recital of a bond for securing the payment of an annuity.

To all whom these presents shall come, *H. W.* heretofore of ——— and late of —— in the county of —— Gentleman, SENDETH, GREETING, Whereas, the said *H. W.* by a certain bond or obligation under his hand and seal, dated the —— day of —— became bound to *S. W.* of —— in the parish of ——— in the county of —— esquire, in the penal sum of 900l. with a condition there under written, reciting, that the said *S. W.* had contracted and agreed with the said *H. W.* for the absolute purchase of an annuity or clear yearly rent, charge, or sum of —— free from all taxes and deductions, payable quarterly, for and during the natural life of him, the said *H. W.* at and for the price or sum of ———, which the said *S. W.* advanced and paid to the said *H. W.*; therefore, if the said *H. W.* his heirs, executors, or administrators,

id and ſhould, well and truly pay, or cauſe to be CREDITOR.
aid, unto the ſaid *S. W.* his executors, adminiſ-
rators, or aſſigns, One annuity, or clear yearly rent,
harge, or ſum of —— of lawful money of Great Bri-
in, by four even and equal quarterly payments, on
he ſeveral and reſpective days and times therein and
ereinafter mentioned, that is to ſay, on the — day
f ——, the —— day of ——, the —— of
— and the —— day of —— from thenceforth in
ach and every year, for and during the natural life
f the ſaid *H. W.* without any deduction, defalcation,
r abatement whatſoever, the firſt payment thereof,
o begin and be made on the ſecond day of ——
ext enſuing the date thereof, Then the ſaid obliga-
ion to be void, otherwiſe to be and remain in full
orce and virtue, AND Whereas the ſaid *H. W.* by and of the aſ-
ſignment of
ndenture of aſſignment, bearing even date with the certain freehold
and copyhold
aid bond or obligation, did aſſign and ſet over unto eſtates for a
term of years
—— of —— Truſtee, therein named by and for further ſe-
curing the
n the behalf of the ſaid *S. W.* as a further ſecurity ſame,
or the payment of the ſaid annuity, certain freehold,
opyhold, leaſehold, and chattel premiſes therein
articularly mentioned and deſcribed, and the rents,
tereſt, produce, and profits thereof, ſituate and be-
ng at or near —— aforeſaid, To hold to the ſaid
—— his executors, adminiſtrators, and aſſigns,
or the term therein mentioned, ſubject to and upon
he truſts in the ſaid indenture contained; with a
ondition by the ſaid *H. W.* to execute all acts ne-
ceſſary for the better ſecuring the ſaid annuity upon
nd out of the ſaid premiſes. AND whereas by a and of an in-
denture for
ertain indenture bearing date the —— day of ——, granting and
charging the
made between the ſaid *H. W.* of the firſt part, the ſaid ſaid annuity

CREDITOR. *S. W.* of the ſecond part, and *I. M.* of the third part. Reciting amongſt other things, that the ſaid *H. W.* in purſuance of his covenant for that purpoſe, contained in the ſaid indenture, of the —— day of ——, had agreed to grant and charge the ſaid annuity of ——— on certain premiſes therein mentioned, and to demiſe the ſaid premiſes to the ſaid *I. M.* for a term of ninety-nine years, for better ſecuring the ſame annuity in manner thereinafter mentioned. It is by the indenture now in recital, witneſſed, that in purſuance of the ſaid agreement, and for the conſiderations therein mentioned, he, the ſaid *H. W.* for himſelf, his heirs, executors, and adminiſtrators, gave, granted, and confirmed, to the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, for and during the natural life of the ſaid *H. W.* an annuity or clear yearly rent charge of —— to be iſſuing, payable, received and taken by him, the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, by and out of certain freehold meſſuages or tenements, lands, and hereditaments, in the pariſhes of —— or one of them, in the ſaid county of —— mentioned and deſcribed in the ſaid indenture of the —— day of —— and therein mentioned or intended to be charged with the ſaid annuity of ——, to have hold, receive, take, and enjoy the ſaid annuity of —— to the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, for and during the natural life of the ſaid *H. W.* payable and ſecured in the manner and form in the ſaid ſeveral indentures for that purpoſe expreſſed. AND it is by the ſaid indenture now in recital, further witneſſes, that for the conſideration therein mentioned, the ſaid *H. W.* at the requeſt of the ſaid *S. W.* did, by the ſaid indenture

on certain premiums therein mentioned.

ow in recital, bargain, ſell, and demiſe, to the ſaid CREDITOR.
M. his executors, adminiſtrators, and aſſigns, all
oſe, the ſaid freehold meſſuages, or tenements, lands,
reditaments, and premiſes, charged by the ſaid in-
nture of the —— day of —— with the payment
the ſaid annuity: to hold the ſame, with the ap-
rtenances unto the ſaid *I. M.* his executors, admi-
ſtrators, and aſſigns, for the term of ninety-nine
ars, if the ſaid *H. W.* ſhould ſo long live. Upon
e truſts in the ſaid indenture of the —— day of —
expreſſed concerning the leaſehold and other he-
ditaments and premiſes, thereby aſſigned to the ſaid
M. AND whereas as a corroborating ſecurity for
e payment of the ſaid annuity to the ſaid *S. W.* by the
id *H. W.* he the ſaid *H. W.* at the time of the execution
the ſaid indenture of the —— day of ——, executed a
arrant of attorney, to confeſs a judgment to the ſaid
W. in his Majeſty's Court of King's-Bench, for
e ſum of £——, which ſaid judgment was afterwards
uly entered up for the ſaid ſum, on the —— day of
——. AND whereas, prior to the date and execu- And reciting
on of the ſaid indenture of the —— day of ——, that in the intermediate time
ut ſubſequent to the ſaid indenture of the —— day between executing the aforementioned
f ——, and the ſaid judgment, the ſaid *H. W.* had deeds, the ſaid
granted and conveyed ſome eſtate or eſtates, of and H. W. had granted & conveyed ſome
n the ſeveral premiſes compriſed in the ſaid ſeveral eſtate in the
ndentures of the —— day of ——, and the —— day of ſaid premiſes to S. I,
——, to *S. I.* of ——, in the county of ——, gentleman,
or the recovery of the poſſeſſion of which the ſaid for the recovery of poſſeſſion
S. I. hath cauſed an action of ejectment to be inſti- of which the
uted in the Court of King's-Bench, which ſaid ſaid S. I. hath caused and elegit to be
ction is ſtill depending. AND whereas the ſaid an- brought, and
nuity of £— ſo ſecured to the ſaid *S. W.* as aforeſaid,

CREDITOR. being conſiderably in arrear, a writ of elegit was in Michaelmas term now laſt paſt, iſſued upon the ſaid judgment, by virtue whereof, a moiety of the lands and hereditaments of the ſaid *H. W.* in the ſaid ſeveral indentures mentioned and ſpecified, was delivered to the ſaid *S. W.* to hold to him and his aſſigns as his free tenements, according to the form of the ſtatute, until he ſhould fully have levied his debt and damages in the ſaid writ mentioned, as by the ſaid judgment, writ, and inquiſition thereupon taken, reference being thereto reſpectively had will more fully appear. And whereas the ſaid *S. W.* hath procured an injunction to be iſſued out of the Court of Chancery againſt the ſaid *H. W.* to prevent him from ſurrendering the ſaid copyhold premiſes, the ſaid *S. W.* having inſtituted a ſuit there for compelling a ſurrender of the ſame to him purſuant to the covenants in the ſaid recited deeds. AND whereas the ſaid *H. W.* is indebted to the ſaid *S. W.* in the ſum of £—, excluſive of the arrears of the ſaid annuity and a conſiderable ſum is alſo now due in reſpect of ſuch arrears, and the ſaid *H. W.* is alſo indebted unto ——— of ——, in the ſum of £—, due to him for buſineſs done in reſpect of the ſaid annuity and otherwiſe, and there is alſo a conſiderable ſum of money due to the ſaid *S. W.* on account of the coſts of the ſaid ejectment and elegit, and other coſts which have been incurred in reſpect of the ſaid annuity, but which are not at preſent aſcertained, and in order to recover the poſſeſſion of the ſaid moiety of the ſaid premiſes in the ſaid inquiſition mentioned, the ſaid *S. W.* inſtituted an ejectment as of Hilary term laſt paſt, and hath obtained judg-

that the ſaid annuity being in arrear, an elegit was iſſued on ſaid judgment,

and lands delivered,

and the ſaid H. W. is indebted to ſaid S. W. &c. in ſeveral ſums for, &c.

And an ejectment ſued out to recover poſſeſſion under the ſaid elegit, and

ment in ſuch ejectment. Now KNOW YE, and theſe preſents witneſs, that for the better raiſing and ſatiſfying the arrears of the ſaid annuity, and the coſts, and the ſums of money mentioned as aforeſaid, the ſaid *H. W.* hath agreed and directed, and doth hereby agree and direct the ſeveral tenants of the premiſes, to attorn and become tenants of ſuch premiſes to the ſaid *S. W.* and pay the rents and arrears of rent, due and to become due in reſpect thereof, to the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, and that he the ſaid *S. W.* ſhall and may accordingly enter into full poſſeſſion thereof, to hold to him the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, from henceforth until all arrears of the annuity now due, and which ſhall hereafter grow due in reſpect of the ſaid annuity, together with the ſaid ſum of £—, now due and owing from the ſaid *H. W.* to the ſaid *S. W.* upon a former account between them, and alſo all coſts and charges already incurred at law or in equity, in anywiſe relating to the ſaid annuity and arrears thereof, and alſo all coſts of the ſaid writ of elegit, and alſo all coſts of defending the ſaid ejectment, brought by the ſaid *S. I.* againſt the ſaid *H. W.* as aforeſaid, as well ſuch as are already incurred as ſhall hereafter be incurred in defending the ſame, ſuch coſts to be taxed by the proper officers of the reſpective courts aforeſaid, together with the ſaid ſum of £— now due and owing to the ſaid —— as aforeſaid, and that the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, ſhall and may let ſuch parts of the ſaid premiſes as now are, or ſhall at any time hereafter be untenanted, to any perſon or perſons whomſoever, for the beſt and greateſt yearly rent

CREDITOR.

judgment thereupon had for ſatisfying the ſame, the ſaid H. W. hath agreed that the ſeveral tenants ſhall attorn to the ſaid S. W.

and pay him the rents,

and that he ſhall hold the ſame until all arrears, &c. be paid.

With power to demiſe the ſame.

CREDITOR. he or they can obtain for the ſame. And further, that he the ſaid *H. W.* his heirs and aſſigns, ſhall and will do and execute all further and other lawful acts in his and their power, for the purpoſe of enabling him the ſaid *S. W.* to compel and recover payment of all rents and profits of the ſaid ſeveral premiſes, as well freehold as copyhold, in the ſaid ſeveral indentures of the —— day of ——, and the —— day of —— particularly mentioned, until all the arrears, coſts, and charges aforeſaid, ſhall be fully diſcharged. And further, that he the ſaid *H. W.* his heirs, executors, adminiſtrators, and aſſigns, ſhall and will do and execute all further and other lawful act and acts, for the better ſecuring the punctual payment of the ſaid annuity in future, by demiſing all or any part of the ſaid ſeveral premiſes, from time to time, at a full yearly rent for and during the life of the ſaid *H. W.* or otherwiſe as by the ſaid *S. W.* his executors, or adminiſtrators, ſhall be required. And further, that if the ſaid *S. I.* ſhould further proſecute and proceed in his ſaid ejectment, and ſhould recover and obtain poſſeſſion of the ſaid premiſes compriſed in the ſaid herein-before in part recited indentures, or any part thereof, under and by virtue of the ſame, whereby he the ſaid *S. W.* ſhould be turned out of poſſeſſion of the ſame ſeveral premiſes, or any part thereof, that the ſaid *H. W.* his heirs, executors, or adminiſtrators, ſhall and will, from time to time, pay and ſatisfy to the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, a ſum of money equal to the amount of ſuch rents and profits, that ſhould from time to time be ſo had and taken by the ſaid *S. I.* out of and from the ſaid

And to all further acts for ſecuring the punctual payment of the ſaid annuity.

And to ſatisfy S. W. if S. I. ſhall recover the ſaid premiſes where. by S. W. ſhall be evicted.

rents and profits of the ſaid eſtates, or either of them. CREDITOR.

AND whereas by a certain other bond or obligation, dated the —— day of ——, under the hand and ſeal of, and executed by, *B. F.* of ——, in the county of ——, gentleman, the ſaid *B. F.* became bound to the ſaid *H. W.* in the penalty of £—, with a condition thereunder written, reciting the ſaid firſt recited bond, from the ſaid *H. W.* to the ſaid *S. W.* and the condition thereof, in the words, or to the effect as the ſame is herein-before recited and alſo reciting, that notwithſtanding the recital in the ſame bond that the ſaid *S. W.* had contracted and agreed with the ſaid *H. W.* for the purchaſe of the ſaid annuity, for the ſaid ſum of ——, which he had advanced and paid to the ſaid *H. W.* yet the ſaid ſum of — was actually advanced and paid to and for the ſole and ſeparate uſe and account of the ſaid *B. F.* which the ſaid *B. F.* did acknowledge and declare, the condition therefore of the bond now in recital, was, that if the ſaid *B. F.* his heirs, executors, or adminiſtrators, or any of them, did and ſhould well and truly pay, or cauſe to be paid unto the ſaid *S. W.* his executors, adminiſtrators, or aſſigns, the ſaid annuity or yearly ſum of £— at the days and times in the condition of the ſaid firſt recited bond or obligation mentioned, and alſo if the ſaid *B. F.* his heirs, executors, or adminiſtrators, did and ſhould at the end of the ſaid term of —— years, pay the ſaid ſum of £—, and all arrears then due, and likewiſe ſave harmleſs and keep indemnified the ſaid *H. W.* his heirs, executors, and adminiſtrators, and every of them, and his and their goods and chattels, lands and tenements, of, from, and againſt all ſuch charges, payments, damages, and

Recital of another bond.

CREDITOR. expences, that he or they ſhould or might pay, ſuffer, ſuſtain, incur, or be put unto, for or by reaſon or means, or upon account of his executing the ſaid firſt recited bond to the ſaid *S. W.* or the ſaid indenture of aſſignment to the ſaid *I. M.* or for or upon account of any matter or thing relating thereto, then the bond now in recital ſhould be void. AND whereas for the better indemnifying the ſaid *H. W.* the ſaid *B. F.* on the ſaid —— day of ——, executed a warrant of attorney to confeſs judgment againſt him in his Majeſty's Court of Common Pleas, at Weſtminſter, at the ſuit of the ſaid *H. W.* for the ſaid ſum of £——. And whereas in or about —— term laſt, judgment was accordingly entered in the ſaid court at the ſuit of the ſaid *H. W.* againſt the ſaid *B. F.* for the ſaid ſum of £— with coſts. AND whereas the ſaid *B. F.* did not pay to the ſaid *S. W.* the ſaid annuity of £—, or the ſaid ſum of £— according to the condition of the ſaid bond. AND whereas the ſaid *H. W.* for the better ſecuring to the ſaid *S. W.* the ſaid annuity and the arrears thereof, and the coſts and charges aforeſaid, hath agreed to aſſign to him the ſaid bond of the ſaid *B. F.* and the ſaid judgment againſt him. Now therefore theſe preſents further witneſs, that for the conſiderations aforeſaid, and in conſideration of the ſum of — to the ſaid *H. W.* paid by the ſaid *S. W.* the receipt whereof is hereby acknowledged, he the ſaid *H. W.* hath bargained, ſold, aſſigned, tranſferred, and ſet over, and doth by theſe preſents, bargain, ſell, aſſign, transfer and ſet over unto the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, the ſaid laſt hereby before recited bond or obligation

And of a warrant of attorney to confeſs judgment thereon.

Witneſs.

Aſſignment of bond.

and judgment, and all and every ſum or ſums of money now due and owing, or to become due and owing by virtue thereof, and all the right, title, claim, or intereſt, in law or equity, of him the ſaid *H. W.* of, in, or to the ſaid bond or judgment, and the money due thereon, and intended to be ſecured thereby, together with the ſame bond, to have, hold, receive, take and enjoy the ſaid bond and judgment, and the monies due or to grow due thereon, unto and for the uſe and benefit of the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, to the intent that the monies to be recovered and received by virtue of the aſſignment hereby made, in and of the profits and proceeds of the meſſuages, lands, and hereditaments aforeſaid, be applied in payment of the ſaid annuity and debt, to the ſaid *S. W.* and the arrears of the ſaid annuity and the coſts aforeſaid. And the ſaid *H. W.* for the conſiderations aforeſaid, hath made, ordained, conſtituted, and appointed, and doth by theſe preſents, make, ordain, conſtitute, and appoint, the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, the true, lawful, and irrevocable attornies and attorney, of him the ſaid *H. W.* for him in his name, and in the name or names of his executors or adminiſtrators, but for the proper uſe and benefit of the ſaid *S. W.* his executors, adminiſtrators, or aſſigns, to aſk, demand, and receive of the ſaid *B. F.* his heirs, executors, or adminiſtrators, the monies due and to grow due upon, and intended to be ſecured by the ſaid bond and judgment, and on non-payment thereof, or of any part thereof, to commenence, ſue, and proſecute any ſuit, action, or execution, againſt the ſaid *B. F.* his heirs, executors,

CREDITOR.

Warrant of attorney to recover the ſame or to accept any ſatisfaction thereupon.

CREDITOR or adminiſtrators, or his and their goods and chattels, lands and tenements, with full power to agree to and accept of any compoſition in ſatisfaction of the ſaid bond and judgment, and on payment of the ſaid monies, or other ſatisfaction for the ſame, to deliver up and cancel the ſaid bond, and releaſe and acknowledge ſatisfaction on record, of or upon the ſaid judgment, and one or more attornies or attorney, under the ſaid *S. W.* his executors or adminiſtrators, for the purpoſes aforeſaid, to ſubſtitute and appoint, and whatſoever the ſaid *S. W.* his executors or adminiſtrators, or the attornies or attorney to be by him or them ſo appointed as aforeſaid, ſhall lawfully do in the premiſes, the ſaid *H. W.* doth hereby promiſe to ratify and confirm, AND the ſaid *H. W.* for himſelf, his heirs, executors, and adminiſtrators, doth covenant and promiſe, with and unto the ſaid *S. W.* his executors, adminiſtrators, and aſſigns, that he the ſaid *H. W.* hath not received, and that he, his executors, or adminiſtrators will not receive the monies due or to grow due on the ſaid bond or judgment, or any part thereof, nor will releaſe or diſcharge the ſame, or diſavow, diſcontinue, or releaſe any action, ſuit or execution, to be thereupon had, brought, proſecuted, or obtained by the ſaid *S. W.* his executors, adminiſtrators, or aſſigns, but will avow, juſtify, and ſupport all lawful proceedings, by virtue or in execution thereof. Provided always, and it is hereby agreed and declared, by and between the ſaid parties hereto, that theſe preſents, or any thing herein contained, ſhall not extend or be conſtrued to extend, to releaſe, diſcharge, or in any wiſe affect the ſaid elegit ſo obtained by the ſaid *S. W.*

Covenant that the ſaid H. W. hath not received nor will receive the money due on the ſaid bond, &c.

Nothing herein contained to effect the ſaid elegit,

as aforeſaid, or the poſſeſſion obtained in reſpect thereof, or to prejudice the injunction obtained by the ſaid *S. W.* in the Court of Chancery, to reſtrain the ſaid *H. W.* from ſurrendering the ſaid copyhold premiſes, or any future proceedings in the ſaid ſuit in Chancery, in caſe of any breach of this agreement on the part of the ſaid *H. W.* to which end the ſaid ſuit ſhall in the mean time remain in its preſent ſtate, or to bar or prevent the ſaid *S. W.* his executors, adminiſtrators, or aſſigns, from taking or proſecuting any remedy or proceeding whatſoever againſt the ſaid *H. W.* his heirs, executors, or adminiſtrators, for the recovery of the ſaid annuity, or the arrears thereof, or of any part thereof, or any of the ſums of money aforeſaid, hereby agreed to be paid as aforeſaid, in caſe the ſecurity hereby made, or agreed to be made, ſhall in any wiſe fail or be inſufficient or inadequate to pay the ſaid annuity and the arrears thereof, or the ſaid ſeveral ſums of money hereby agreed to be paid as aforeſaid, or any of them, any thing herein contained to the contrary thereof in any wiſe notwithſtanding. In witneſs, &c.

CREDITOR ——— or prejudice the ſaid injunction obtained by the ſaid S. W. in the court of Chancery, or prejudice the ſuit depending, or debar the ſaid S W. from purſuing any other remedy.

Memorandum, July ——, *E.P. K.T. L.I. S.I. W.B. A.M.* ſeverally tenants of the within named *H. W.* of the meſſuages, lands, hereditaments, compriſed in the within in part recited indentures, did ſeverally attain to the within named *S. W.* and put him in ſeiſen of their rents, by the payment of ſixpence each, to the ſaid *S. W.* by the hands of *D. I.* gentleman, his attorney, in the preſence of, &c.

Memorandum of attornment.

DEBTOR, &c.

An Agreement that a Perſon ſhall hold Title Deeds as a Depoſit, and receive Sums to become Due upon a Policy *of* Aſſurance, *by Way of collateral Security for Money lent.*

ARTICLES of agreement indented, made, concluded, and fully agreed upon, this —— day of ——, in the —— year, &c. and in the year of our Lord ——, Between *W. S.* of &c. (*the borrower,*) of the one part, and *D. J.* of &c. (*the lender,*) of the other part. WHEREAS the ſaid (*borrower,*) is ſeiſed of, or entitled to the fee ſimple and inheritance of and in a meſſuage or tenement and hereditament, in ——, in the pariſh of ——, ——, in the county of ——, and is alſo poſſeſſed of or entitled unto divers other meſſuages, tenements, and hereditaments, in —— aforeſaid, for the remainder of certain terms of years granted therein. AND WHEREAS the ſaid (*lender*) hath agreed to lend to him the ſaid (*borrower,*) the ſum of ——, upon having the repayment thereof with intereſt, ſecured to him by the bond of the ſaid (*borrower,*) and by depoſit of the ſeveral deeds and writings relating to the title of the ſaid freehold and leaſehold lands, tenements, and hereditaments, and two ſeveral policies of inſurance, are mentioned and ſet forth in the ſchedule thereof here under written; and by his executing to the ſaid (*lender,*) on his requeſting the ſame, a mortgage of the ſame meſſuages, tenements, and hereditaments, for ſecuring the ſaid ſum of ——, and the intereſt thereof. AND WHEREAS the ſaid (*borrower,*) in purſuance of the ſaid agreement,

Recital that S. W. is ſeiſed in fee of ſome hereditaments,

and of others for years.

Recital of agreement to lend money on having the ſame ſecured by bond and depoſit of title deeds,

and policies of inſurance,

and by executing mortgage on requeſt.

Recital of bond given,

hath, by his bond or obligation, in writing, bearing even date with these presents, become bound to the said (*lender,*) in the penal sum of ——, conditioned for the payment to the said (*lender,*) his executors, administrators, or assigns, of the sum of ——, with interest for the same, after the rate of £5 for £100, for a year, on the — day ——, now next ensuing. DEBTOR, &c.

AND WHEREAS the said (*borrower,*) in further pursuance of the said agreement, hath deposited the said several deeds, writings, and policies of insurance, mentioned in the schedule here under written, in the hands of the said (*lender,*) which he the said (*lender*) doth hereby acknowledge. and of deposit of deeds.

NOW THESE PRESENTS WITNESS, and it is hereby agreed and declared, by and between the said parties to these presents, that the said several deeds and writings mentioned in the said schedule here under written, are deposited in the hands of the said (*lender,*) as a security for the said sum of ———, and the interest thereof, and that the same, and all sum and sums of money which may become payable under or by virtue of the said policies of insurance, or either of them, shall and may be retained and kept by the said (*lender,*) his executors, administrators, or assigns, until payment shall be made to him or them by the said (*borrower,*) his heirs, executors, or administrators, of the said sum of ———, and the interest thereof. Agreement that the lender shall receive sums to become payable on the said policy.

AND the said (*borrower*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (*lender,*) his executors, administrators, and assigns, that he the said (*borrower,*) his heirs, executors, and administrators, shall and will, at any time hereafter, at his and their Covenant by borrower, that he will convey lands, &c. and assign policy to lender, on request.

DEBTOR, &c.

own coſts and charges, upon the requeſt of the ſaid (*lender,*) his executors, adminiſtrators, or aſſigns, by ſuch conveyances, aſſignments, and aſſurances, as he or they, or his or their counſel learned in the law, ſhall in that behalf adviſe or require, well and effectually convey, aſſign, and aſſure, the ſaid freehold and leaſehold meſſuages, tenements, and hereditaments, with their and every of their appurtenances, and alſo the ſaid policies of inſurance, and all monies to become due and payable in reſpect thereof, unto the ſaid (*lender,*) his heirs, executors, adminiſtrators, and aſſigns, for all the eſtate, term, and intereſt, of him the ſaid (*borrower,*) therein, free from all incumbrances made, done, or committed, by the ſaid (*borrower,*) ſubject to a proviſo or agreement to be contained in ſuch conveyances and aſſurances, for redemption thereof, by the ſaid (*borrower,*) his heirs, executors, adminiſtrators, or aſſigns, on payment by him or them to the ſaid (*lender,*) his executors, adminiſtrators, or aſſigns, of the ſaid ſum of ———, with intereſt for the ſame, after the rate aforeſaid, at the expiration of ſix calendar months next after the date of ſuch mortgage. In witneſs, &c.

ſubject to redemption.

Agreement to poſtpone the Sale of one of certain Ships, of which an aſſignment (a) had been made for the Benefit of a Creditor.

ARTICLES of agreement had, made, concluded, and agreed upon, this —— day of ———, Between

(a) See this aſſignment title ASSIGNMENT.

W. V. of &c. of the one part, and *B. S.* and *T. S.* of &c. merchants, of the other part. [*Recital of the Indenture of Aſſignment.*] AND WHEREAS no transfer hath been made by the ſaid *B. S.* and *T. S.* to the ſaid *W. V.* of the ſaid ſum of —— 3 per cent. conſ. anns. purſuant to the proviſo and agreement in the ſaid indenture of aſſignment for that purpoſe contained. AND WHEREAS the ſaid ſhip or veſſel is now arrived in the port of—, and the ſaid *W. V.* hath by—his attorney duly authoriſed and empowered (by letter of attorney for that purpoſe) in purſuance of the power given to him by the ſaid in part recited indenture, taken poſſeſſion of the ſaid ſhip or veſſel, together with the maſts, ſails, tackle, apparel, materials, appendants, and appurtenances whatſoever to the ſame belonging, or in any wiſe appertaining. AND WHEREAS the ſaid ſhip or veſſel is deſigned, and is now about to make another voyage to ——— and it will therefore be inconvenient, and a very great loſs and detriment to the ſaid *B. S.* and *T. S.* if the ſaid *W. V.* ſhould proceed to make ſale of the ſaid ſhip with the appurtenances agreeable to the power given him as aforeſaid, and therefore the ſaid *W. V.* hath, at the requeſt, and for the accommodation of the ſaid *B. S.* and *T. S.* agreed to defer and poſtpone the ſale of the ſhip, for the preſent, and to permit and ſuffer the ſame, ſo being and continuing in the poſſeſſion of the ſaid — the attorney, of the ſaid *W. V.* as aforeſaid, to proceed on ſuch its intended voyage, without any interruption, moleſtation, or diſturbance whatſoever, of, from, or by him the ſaid *W. V.* his executors, adminiſtrators, or aſſigns, (except ſuch poſſeſſion by him the ſaid *W. V.*

DEBTOR, &c.

Recital of aſſignment for creditors,

of poſſeſſion of ſhips taken;

of ſhip being about to make another voyage,

and agreement to poſtpone ſale of ſhip,

and to permit ſame to proceed on the ſaid voyage without any interruption, except poſſeſſion.

DEBTOR, &c.

taken as aforeſaid) and not to exerciſe or put in force the power and authority he now hath, of ſelling and diſpoſing of ſuch ſhip or veſſel, till the ſame ſhall have returned from its ſaid intended voyage, in manner herein after mentioned. AND in conſideration thereof, the ſaid *B. S.* and *T. S.* have agreed, that when, and as ſoon as ſuch ſhip ſhall return from abroad, they ſhall not, nor will interrupt, moleſt, impede, or diſturb the ſaid *W. V.* his executors, adminiſtrators or aſſigns, in exerciſing his right of making ſuch ſale, nor take any advantage of his deferring and poſtponing ſuch ſale, but ſhall and will permit and ſuffer him at the return of ſuch ſhip, to make ſale thereof, with its appurtenances, in as full and ample a manner, as he might now do; and in the mean time, and during ſuch voyage, and until ſuch return of the ſaid ſhip, they the ſaid *B. S.* and *T. S.* their executors, adminiſtrators or aſſigns, ſhall not, nor will do, or commit, or permit, or ſuffer any wilful damage whatſoever, to be done to ſuch ſhip, or any of the maſts, ſails, tackle, apparel, furniture, materials, appendants and appurtenances whatſoever, to the ſame belonging, but ſhall and will from time to time, inſure, and cauſe the ſame to be inſured, and do, or cauſe to be done, the utmoſt in their power to preſerve and keep the ſame ſhip or veſſel in good order and condition during ſuch voyage, and to permit the ſame to return as ſpeedily, and in as good plight and condition, as may be in manner hereinafter mentioned. Now theſe preſents witneſs that in purſuance of the ſaid agreement, on the part and behalf of him the ſaid *W. V.* and in conſideration of the premiſes, and for and in conſideration of the covenants and agreements herein after contained

Debtors upon return of ſhip not to interrupt ſale.

And will not permit any wilful damage to be done to the ſaid ſhip in the mean time.

Witneſs.

n the part and behalf of them the ſaid *B. S.* and *T. S.* and for and in conſideration of the ſum of — lawful money of *Great Britain*, unto the ſaid *W.* in hand paid by the ſaid *B. S.* and *T. S.* at or fore the ſealing and delivery of theſe preſents, the ceipt whereof is hereby acknowledged, he the ſaid *V.* for himſelf, his executors, adminiſtrators and igns, doth hereby covenant, promiſe, and agree, to d with the ſaid *B. S.* and *T. S.* their executors, miniſtrators and aſſigns, that in caſe the ſaid ſhip veſſel, called the ——— ſhall ſet ſail on its id intended voyage, within the ſpace of —— next nſuing the date of theſe preſents, he the ſaid *W. V.* all and will defer and poſtpone, and not make any le of ſuch ſhip or veſſel, till ſuch time as hereinafter mentioned, but ſhall and will permit and ſuffer e ſaid ſhip or veſſel, to proceed on ſuch its intend- voyage, without any interruption, moleſtation, nial or diſturbance whatſoever, of, from, or by im the ſaid *W. V.* his executors, adminiſtrators or ſigns, or any other perſon or perſons whomſoever, laiming or to claim, from, by, under or in truſt for im, them, or any of them. AND ALSO that he the id *W. V.* his executors, adminiſtrators or aſſigns, hall not, nor will proceed to, or make ſale of ſuch hip or veſſel, or of any of the maſts, ſails, ſail-yards, nchors, ropes, cords, cannons, guns, fire-arms, amu- ition, proviſion, tackle, apparel, boats, oars, fur- iture, materials, appendants and appurtenances hatſoever, to the ſaid ſhip or veſſel belonging or in ny wiſe appertaining; nor in any wiſe exerciſe, or ut in force, the power or authority reſerved and iven to him the ſaid *W. V.* his executors, admini- ſtrators and aſſigns, of ſelling or diſpoſing of ſuch

DEBTOR, &c.

Conſideration.

Creditor covenants to permit ſhip to purſue its intended voyage.

Not to make ſale thereof until it ſhall have returned from the ſaid voyage.

DEBTOR, &c.

ſhip or veſſel, in and by the ſaid in part recited indenture, till the ſame ſhip or veſſel ſhall have returned from its ſaid intended voyage. AND theſe preſents further witneſs, that for the conſiderations aforeſaid, and in conſiderations of the premiſes, and for and in conſideration of the ſaid covenant or agreement entered into, by him the ſaid *W. V.* as aforeſaid, they the ſaid *B. S.* and *T. S.* for themſelves ſeverally and reſpectively, and for their ſeveral and reſpective executors, adminiſtrators and aſſigns, do, and each of them doth covenant, promiſe and agree to and with the ſaid *W. V.* his executors, adminiſtrators, and aſſigns, that when and ſo often as the ſaid ſhip or veſſel ſhall return from its ſaid intended voyage, they the ſaid *B. S.* and *T. S.* their executors, adminiſtrators and aſſigns, ſhall not, nor will interrupt moleſt, impede, hinder, diſturb, or in any wiſe prevent the ſaid *W. V.* his executors, adminiſtrators and aſſigns, from proceeding to the ſale of the ſaid ſhip with its appurtenances, or of exerciſing his ſaid right and power of making ſuch ſale, nor take any advantage whatſoever of the ſaid *W. V*'s. deferring and poſtponing the ſale of the ſaid ſhip, and not proceeding to ſuch ſale, till its return from abroad, in manner aforeſaid, but ſhall and will (in caſe the ſaid *B. S.* and *T. S.* or one of them, their, or one of their heirs, executors, or adminiſtrators, ſhall not in the mean time, have made, or cauſe to be made a transfer in the name of the ſaid *W. V.* his executors, adminiſtrators or aſſigns, into the books of the governor and company of the bank of *England*, of the ſaid capital ſum of —— 3 per cent conſol. bank annuities, and in the mean time, and until ſuch transfer ſhall be made, well and truly pay, or cauſe to be paid,

Further witneſs.

Debtors covenant not to interrupt ſale of ſhip upon its return.

That in caſe no transfer ſhall be made of the ſaid 3 per cent. annuities.

DEBTOR, &c.

nto the ſaid *W. V.* his executors, adminiſtrators or ſſigns, ſuch dividends as would have become due, pon, or in reſpect of the ſaid ſum of —— of like nnuities ſo ſold out as aforeſaid, in caſe the ſame ad not been ſold) permit and ſuffer him the ſaid *V. V.* his executors, adminiſtrators and aſſigns, at he return of ſuch ſhip, to make ſale thereof, toge- her with all and ſingular the maſts, ſails, ſail-yards, nchors, cables, ropes, cords, cannons, guns, fire- rms, ammunition, tackle apparel, boats, oars, fur- iture, materials, appendants, and appurtenances hatſoever, to the ſame ſhip or veſſel, belonging, or n any wiſe appertaining to the ſame, and in as full nd ample a manner, and as effectually to all intents nd purpoſes as he ſaid *W. V.* his executors, admi- niſtrators or aſſigns, might, or could have done, had he now proceeded to the ſale thereof immediately, nd not poſtponed the ſame ſale. AND alſo that in he mean time, and during ſuch intended voyage, nd until the return of the ſaid ſhip or veſſel, they the ſaid *B. S.* and *T. S.* their executors, adminiſtrators or aſſigns, ſhall not, nor will do, or commit, or per- mit, or ſuffer to be done or committed, any wilful damage whatſoever, to the ſaid ſhip or veſſel, or any of the maſts, ſails, anchors, cables, ropes, cords, can- nons, guns, fire-arms, ammunition, tackle, apparel, boats, oars, furniture, materials, appendants and apppurtenances whatſoever, to the ſame belonging, or appertaining, or in any reſpect interrupt or diſ- turb the ſaid — the attorney of the ſaid *W. V.* in the poſſeſſion thereof as aforeſaid, but ſhall and will from time to time inſure, and cauſe the ſame to be inſured at the proper times of inſurance for the ſame, at the ſum, and in the manner, and form, in the ſaid in part

The creditor may ſell the ſame.

Debtors not to permit any wilful damage to be done to the ſaid ſhip,

nor interrupt the attorney of the creditor in the poſſeſſion thereof,

but will inſure and keep the ſame inſured.

MARRIAGE. recited indenture for that purpoſe contained; and ſhall and will do, or cauſe to be done, the utmoſt in their power to preſerve and keep the ſame ſhip and veſſel, with its appurtenances, as aforeſaid, in good order and condition, during the ſaid intended voyage. AND alſo that they the ſaid *B. S.* and *T. S.* their executors, adminiſtrators, and aſſigns, ſhall and will do the utmoſt in their power to make the ſaid intended voyage as ſpeedy as poſſible, and conduct and manage the ſaid ſhip or veſſel on its ſaid intended voyage, ſo that as little damage as poſſible may be done thereto, or to any of its maſts, ſails, anchors, cables, ropes, cords, cannons, guns, fire arms, ammunition, tackle, apparel, boats, oars, furniture, materials, appendants, or appurtenances, and ſhall and will uſe their utmoſt endeavours to procure the ſame ſhip or veſſel, with its appurtenances, to return as ſpeedily, and in as good order, plight, and condition, as may be. In witneſs, &c.

Voyage to be performed as ſpeedily as poſſible.

IV. AGREEMENTS PREVIOUS TO MARRIAGE.

Articles of Agreement before Marriage, (a) by which the intended Huſband covenants to ſecure, by future Settlement, two ſeveral Jointures to his intended Wife, by virtue of Powers for that purpoſe contained in his Father's Will, &c.

ARTICLES of agreement tripartite, had, made, concluded, and agreed upon, the —— day &c.

(a) See the conſtruction of marriage articles, ante p. 12 and 1. *Fonb. Eq.* 101, p. (n.) And for the uſe and operation of the

Between *T. H.* of &c. Eſq. and *S. H.* ſpinſter, only daughter of the ſaid *T. H.* of the firſt part, Sir *B. C.* of &c. Bart. of the ſecond part, and the Hon. *B. D.* of &c. and *H. R.* of &c. Eſq. of the third part. MARRIAGE.

WHEREAS a marriage is intended to be ſhortly had and ſolemnized between the ſaid Sir *B. C.* and the ſaid *S. H.* with the approbation and conſent of the ſaid *T. H.* her father. AND whereas the ſaid *S. H.* is entitled to certain lands, &c. under a deed of aſſignment thereof, made and executed to her by the ſaid *T. H.* her father, which ſaid &c. are now worth, to be ſold, the ſum of ——, of lawful money of *Great Britain*. AND whereas the ſaid Sir *B. C.* under and by virtue of the laſt will and teſtament of Sir *B. C.* late of &c. his late grandfather, deceaſed, bearing date the — &c. is poſſeſſed of and entitled unto all that &c. for the term of his natural life, without impeachment of waſte, with remainder, from and after the death of the ſaid Sir *B. C.* to the firſt and every other ſon and ſons of the heirs male of their reſpective bodies; and in the ſaid will of the ſaid Sir *B. C.* the grandfather, is contained a proviſo that it ſhould and might be lawful for his grandſon, the ſaid Sir *B. C.* party hereto, being the perſon in poſſeſſion of the ſaid premiſes, according to the foregoing limitation, by any writing and writings under his hand and ſeal, to be atteſted by three or more credible witneſſes, to limit and appoint the ſaid premiſes, and any part thereof, to the uſe of any woman or

Recital of will by which the huſband is empowered to make jointures.

ſeveral proviſos, &c. uſually contained in marriage articles, ſee the notes ſubjoined to the firſt *marriage ſettlement*, inſerted under the head RELEASE.

MARRIAGE. women, as and for her and their jointure or jointures, in manner following, that is to ſay,) ſo much of ſuch portion and part of the premiſes as will yield, anſwer, and pay, to ſuch woman or women, after the rate of £100 a year for life for every £1000 which ſhe or they ſhall have or bring as a fortune, or marriage portion, and no more, and not otherwiſe, ſo as no ſuch jointure be made with liberty to commit waſte. Now theſe preſent articles witneſs, and the ſaid Sir *B. C.* for himſelf, his heirs, executors, adminiſtrators, and aſſigns, doth hereby covenant, promiſe, and agree, to and with the ſaid *T. H.* his executors and adminiſtrators, in conſideration of the ſaid marriage intended between him the ſaid Sir *B. C.* and *S. H.* of the ſaid ſum of —— the value of the ſaid lands &c. being the fortune or portion which ſhe the ſaid *S. H.* is abſolutely entitled to, in poſſeſſion as aforeſaid, that he the ſaid Sir *B. C.* when and as ſoon as the ſaid marriage between him and the ſaid *S. H.* ſhould take effect and be ſolemnized, or as ſoon after as conveniently may be, by one or more deed or deeds, writing or writings, under his hand and ſeal, to be atteſted by three or more credible witneſſes, by virtue of, according to, and in purſuance and full execution of the proviſo for that purpoſe contained in the ſaid recited will of the ſaid Sir *B. C.* his grandfather, and in ſuch manner as counſel ſhall adviſe and approve of, ſhall and will limit and appoint, the ſaid, &c. which he is now in poſſeſſion of, under the limitation thereof to him for life, in the ſaid will contained, unto the ſaid *B. D.* and *H. R.* their executors, adminiſtrators, and aſſigns, to hold to them the ſaid *B. D.* and *H. R.* their execu-

Witneſs huſband covenants after ſolemnity of marriage to convey premiſes.

to truſtees.

tors, adminiſtrators, and aſſigns, from the death of the ſaid Sir *B. C.* for, and during, and unto the full end and term of 100 years, if ſhe the ſaid *S. H.* ſhall ſo long live, upon truſt, and to the intent and purpoſe that in caſe the ſaid *S. H.* his intended wife, ſhall ſurvive him the ſaid Sir *B. C.* they the ſaid *B. D.* and *H. R.* and the ſurvivor of them, his executors, adminiſtrators, and aſſigns, ſhall and do, by and out of the manors, &c, to be to them limited as aforeſaid, pay, or cauſe to be paid, to the ſaid *S. H.* and her aſſigns, or permit her and them to receive an annuity, or clear yearly rent charge of —— a year, for the term of her natural life, by even and equal quarterly payments, at the four moſt uſual feaſts, or days of payment, in the year, (that is to ſay,) the nativity, &c. in every year, the firſt payment thereof to begin and be made on the firſt of the ſaid feaſts or days of payment, which ſhall happen next after the deceaſe of the ſaid Sir *B. C.* the ſaid annuity or yearly rent-charge of ——, to be ſo paid to, or received by the ſaid *S. H.* as and for her jointure, and in part of ſuch jointure. And whereas the ſaid *S. H.* is alſo entitled, in reverſion, expectant on the death of her ſaid father *T. H.* and of her mother *A.* the wife of the ſaid *T. H.* to the further portion or ſum of —— to be raiſed upon and payable out of all that the manor, &c. and alſo to be raiſed upon and payable out of two certain capital ſums of &c. ſtanding in the names of the Right Hon. *S. E.* and *R. P.* Eſq. truſtees, for that purpoſe named in the indenture of releaſe and ſettlement made previous to the marriage of the ſaid *T. H.* with his firſt wife *A.* ſpinſter, bearing date the — day of ——, ——,

MARRIAGE.

Upon truſt to paya rent charge to the wife, in caſe ſhe ſurvive him.

Recital of being entitled to reverſion, &c.

MARRIAGE. which ſaid ſum of ——, is to be raiſed and paid upon the death of the ſaid *T. H.* and *A.* his wife, by virtue and according to the terms of an appointment thereof, made by the ſaid *T. H.* bearing date the — day of ——, ——, under and by virtue of, and under certain powers to him for that purpoſe given, in and by the ſaid laſt mentioned indenture of releaſe and ſettlement. And the ſaid *S. H.* will be further entitled, upon and after the death of the ſaid *T. H.* and *A.* her father and mother, to one other meſſuage, &c.

Further witneſs. Covenant to limit a further annuity.

NOW THESE PRESENTS FURTHER WITNESS, and the ſaid Sir *B. C.* for himſelf his heirs, executors, adminiſtrators, and aſſigns, doth hereby further covenant, promiſe, and agree, to and with the ſaid *W. S.* his executors, adminiſtrators, and aſſigns, for the conſiderations aforeſaid, and for and in conſideration of ſuch further fortune or portion which ſhe the ſaid *S. H.* will be poſſeſſed of and entitled to, upon the death of her ſaid father and mother, as aforeſaid, or which ſhe may at any time hereafter be poſſeſſed of or entitled to, that when ſuch further portion or fortune of the ſaid *S. H.* or any part thereof, ſhall come into poſſeſſion, or be payable, by virtue of, or under the appointment herein before mentioned to be for that purpoſe made by the ſaid *T. H.* her father, or of any future or other appointment made or to be made by him, or otherwiſe, howſoever, he the ſaid Sir *B. C.* ſhall and will limit and appoint, to or to the uſe of, in truſt, for her the ſaid *S. H.* his intended wife, ſuch further and other annuity or yearly rent charge, to be iſſuing and payable out of, and charged, and chargeable upon the ſaid ſeveral manors, &c. to him deviſed

for life, by the ſaid recited will, or ſome ſufficient part there of, and to be payable to her the ſaid *S. H.* for her life, in caſe ſhe ſhall ſurvive the ſaid Sir *B. C.* her ſaid intended huſband, as and for her jointure; and in further part of ſuch jointure of ſuch clear yearly value and amount, and in ſuch manner as he the ſaid Sir *B. C.* is empowered to do in and by the before mentioned proviſo, in the ſaid recited will for that purpoſe contained, and as counſel ſhall adviſe and approve, over and above the annuity or yearly rent-charge, before covenanted and agreed to be made limited, and appointed to, and to the uſe of the ſaid *S. H.* upon and immediately after the ſolemnization of the ſaid intended marriage, provided that ſuch jointure ſhall not (including the rent-charge of —— per annum before ſettled,) exceed —— per annum in the whole. Provided, always, nevertheleſs, and it is hereby covenanted, declared, and agreed, by and between the ſaid *T. H.* and Sir *B. C.* to be the true intent and meaning of them and of theſe preſents, that in caſe it ſhall happen that the ſaid Sir *B. C.* ſhall be prevented by the accident of death or otherwiſe, from making and executing an appointment or limitation of ſuch future jointure or charge upon the ſaid manor, &c. to him deviſed for life, as aforeſaid, to the ſaid *S. H.* his intended wife, as is hereinbefore covenanted and agreed by him to be done, upon ſuch further fortune or portion coming into poſſeſſion of, and payable to her, as hereinbefore recited, then and in ſuch caſe, and until ſuch appointment of a further jointure ſhall be actually made and executed by the ſaid Sir *B. C.* to the approbation and good liking of

MARRIAGE.

Proviſo that in caſe the ſaid Sir B. C. ſhall be prevented from making ſuch further jointure.

MARRIAGE the counſel of the ſaid *T. H.* his executors, adminiſtrators, or aſſigns. The truſtee or truſtees, perſon or perſons to whom it ſhall then belong to raiſe the money appointed to the ſaid *S. H.* as aforeſaid, or to pay or deliver poſſeſſion of any ſuch further fortune or portion to her, ſhall not pay or deliver the ſame, but ſhall ſtand and be poſſeſſed of ſuch further fortune or portion, which ſhe the ſaid *S. H.* ſhall or may become entitled to as aforeſaid, when and as ſoon as the ſame or any part thereof ſhall veſt in poſſeſſion and become payable, upon truſt, to pay the intereſt or produce thereof from time to time, to the ſaid *S. H.* or her aſſigns, or to permit her or them to receive the ſame, for the term of her natural life, in further part of her jointure, and from and immediately after her deceaſe, upon truſt, for the uſe and benefit of all and every the child and children of the ſaid intended marriage, other than an eldeſt or an only ſon, to be equally divided between or amongſt them, if more than one ſuch child, ſhare and ſhare alike, and to be paid and payable to a ſon or ſons at the age of 21 years, or to a daughter or daughters, at the like age of 21 years, or day of marriage, which ſhall firſt happen in caſe of the death of the ſaid *S. H.* but in default of any ſuch child or children living at the time of the death of the ſaid *S. H.* then upon truſt, for the executors, adminiſtrators, or aſſigns, of the ſaid *S. H.* AND whereas the ſaid Sir *B. C.* not having it in his power, under the before mentioned proviſo in the ſaid will of the ſaid Sir *B. C.* his grandfather to limit or appoint a larger annuity or yearly rent out of the manors, &c. which he is poſſeſſed of

That truſtees then ſhall ſtand poſſeſſed thereof.

Upon truſt to pay the intereſt of ſuch further fortune to her for life,

and after her deceaſe, upon truſt for younger children.

Recital of agreement to charge his perſonal eſtate with further jointure.

as aforeſaid, to the ſaid *S. H.* his intended wife, for her life, as and for her jointure, than he hath herein before covenanted and agreed to do, being after the rate of £100 a year for every £1000 that ſhe is intitled unto in poſſeſſion as aforeſaid, and the ſaid Sir *B. C.* being deſirous, in caſe he ſhould happen to die, and ſhe the ſaid *S. H.* ſhall him ſurvive, that ſhe ſhould have a larger income for her ſupport, and ſuch as ſhall be ſuitable to her ſtation and rank, and he being poſſeſſed of a conſiderable perſonal eſtate, is deſirous to charge the ſame with a further jointure or proviſion for his ſaid intended wife, than he is at preſent impowered to limit and appoint to her, upon and out of his ſaid real eſtate; He the ſaid Sir *B. C.* hath therefore entered into and executed a certain bond or obligation, bearing even date herewith, to the ſaid *B. D.* and *H. R.* their executors, adminiſtrators, and aſſigns, in the penal ſum of £——, with a condition, to be void in caſe the ſaid *S. H.* ſhall die in the life time of the ſaid Sir *B. C.* her intended huſband, or if the ſaid intended marriage ſhall take effect, and ſhe ſhall ſurvive the ſaid Sir *B. C.* then in caſe the executors or adminiſtrators of him the ſaid Sir *B. C.* ſhall, at or before the end of ſix months, from the day of his deceaſe, pay, or cauſe to be paid to them the ſaid *B. D.* and *H. R.* or the ſurvivor of them, his executors or adminiſtrators, the full ſum of £—— of lawful money of Great Britain, with lawful intereſt for the ſame, from the day of his deceaſe. Now it is hereby further declared and agreed, to be the true intent and meaning of the ſaid parties to theſe preſents, that in caſe the ſaid intended marriage ſhall take effect, and the ſaid

MARRIAGE

Appointment of further jointure out of his perſonal eſtate.

MARRIAGE

S. H. ſhall ſurvive the ſaid Sir *B. C.* her intended huſband, whereby the ſaid ſum of £—— will become payable upon the ſaid bond or obligation, then and in ſuch caſe they the ſaid *B. D.* and *H. R.* and the ſurvivor of them, his executors or adminiſtrators, ſhall ſtand and be poſſeſſed of the ſaid recited bond or obligation, and of the ſaid ſum of £—— to be received by them under and by virtue of the ſame bond, upon truſt, to lay out the ſame £—— when the ſame ſhall come to their hands, at intereſt, on mortgage, or government ſecurities, with the approbation of the ſaid *S. H.* and to pay the intereſt or dividends thereof from time to time as the ſame ſhall be received, to her the ſaid *S. H.* or her aſſigns, or to permit her or them to receive ſuch intereſt or dividends for her own uſe, for the term of her natural life, for an increaſe of her jointure, and from and after the deceaſe of the ſaid *S. H.* upon truſt, to pay the ſaid principal ſum of £—— and the intereſt and dividends to grow due for and upon the ſame from ſuch her deceaſe, unto the executors, adminiſtrators, or aſſigns of the ſaid Sir *B. C.* AND whereas in and by the ſaid will of the ſaid Sir *B. C.* the grandfather, he the ſaid teſtator hath declared his will to be, that it ſhould be lawful for every perſon who ſhould be in the actual poſſeſſion of the premiſes in the ſaid will deviſed, by virtue of the limitations aforeſaid, in caſe ſuch perſon at his death leave one or more child or children beſides an eldeſt or an only ſon, by any writing under his hand and ſeal, atteſted by three or more credible witneſſes, to charge all or any of the premiſes in the ſaid will mentioned, or any part thereof, with the payment of £— to ſuch child, if one, and to each

Recital of power to charge premiſes with 2000l. for each child.

of ſuch children if more than one, to be paid reſpectively, if a ſon or ſons, at his and their reſpective ages of 21 years, and if a daughter or daughters, at her and their like ages of 21 years, or days of marriage, which ſhall firſt happen, with legal intereſt unto ſuch portion or portions become payable, but if all or any of ſuch perſons entitled to ſuch portions ſhould die before the ſame becomes payable, then ſuch portion is not to be raiſed at all. Now theſe preſents further witneſs, and the ſaid Sir *B. C.* for the conſiderations aforeſaid, doth hereby for himſelf, his heirs, executors, and adminiſtrators, further covenant, promiſe, and agree, to and with the ſaid, *T. H.* his executors, and adminiſtrators, that in and by the deed or ſettlement to be made in purſuance of theſe preſents, upon and after the ſolemnization of the ſaid intended marriage as before is mentioned, he the ſaid Sir *B. C.* ſhall and will, by virtue and in purſuance and execution of the power to him for that purpoſe given in and by the ſaid recited will, charge the eſtate and premiſes in the ſaid will mentioned, or a ſufficient part thereof, with the payment of the ſum of £2000 to each and every of the child or children, other than and beſides an eldeſt or only ſon, which he the ſaid Sir *B. C.* may leave behind him at his death, begotten on the body of the ſaid *S. H.* his intended wife, ſuch charge to be made in ſuch manner as ſhall be agreeable to the power in the ſaid recited will for that purpoſe contained, and as counſel ſhall adviſe and approve of: but the ſame is to be without prejudice to any limitation or appointment which ſhall be made of an annual or yearly rent-charge, to the ſaid *S. H.* for her life, for her jointure as aforeſaid, from

MARRIAGE

Further witneſs.

Covenant that huſband will after marriage charge the premiſes with the ſum of 2000l. for each child.

MARRIAGE and out of the said estates and premises, by virtue of the covenant hereinbefore for that purpose contained.

Recital of death of trustees.

AND whereas the before named *S. E.* and *R. P.* the trustees in whom the before mentioned sums of £— are vested, in and by the before mentioned indenture of settlement, dated the —— day of ——, for the purpose therein mentioned, (out of which said capital sums of money, the said sum of £—— appointed to the said *S. H.* on the decease of her said father and mother, is in part to rise as aforesaid) are both since deceased, and the said two capital sums are still standing in their names, but are intended to be transferred to the representatives of the survivor of the said deceased trustees, unto and into the names of the said *D. B.* and *H. R.* parties hereto, as soon as the same can be done.

Covenant to procure their representatives to assign stocks into the names of the present trustees.

NOW THEREFORE, the said *T. H.* for himself, his executors and administrators, doth hereby covenant, promise, and agree, to and with the said Sir *B. C.* his executors and administrators, that he will forthwith call upon, and use his best endeavours to procure the person or persons who is or are the personal representative or representatives of the survivor of them the said *S. E.* and *R. P.* to transfer and make over the said two capital sums of ——, &c. unto and into the names of the said *B. D.* and *H. R.* to remain vested in them, their executors, administrators, and assigns, upon the trusts thereof, declared in and by the before mentioned indenture of settlement, dated, &c. or such and so many of them as are now existing and capable of taking effect, and subject thereto. Upon the trusts herein before declared and directed of the said sum of £—— before mentioned, to be appoint-

d by the ſaid *T. H.* to or for the benefit of the ſaid *S. H.* And further that he the ſaid *S. W.* at all times after the ſolemnization of the ſaid intended marriage, hall and will be ready and willing to make, do, nd execute, or cauſe and procure to be made, done, nd executed, all and every ſuch further and other awful and reaſonable act, deed, matter or thing, mitation or appointment for limiting, appointing, nd ſecuring, the raiſing and payment of the ſaid um of £—— appointed to the ſaid *S. H.* at and pon the deceaſe of the ſaid *T. H.* ſubject to the ointure of the ſaid *A.* his wife, if ſhe ſhall ſurvive im, or ſuch other ſum or ſums of money as can or nay be raiſed out of the ſaid eſtate, &c. and the ſum, c. with which the ſame ſtood charged antecedent o the ſaid appointment by ſuch deed or deeds, riting or writings, and in ſuch manner and agreeble to the powers in him for that purpoſe veſted, s the ſaid Sir *B. C.* his executors, adminiſtrators, r aſſigns or his or their counſel, ſhall reaſonably adiſe and require. And it is hereby further declared nd agreed, by and between the parties to theſe preents, that in the indenture or deed of ſettlement to e made in purſuance of theſe preſents, upon and ter the ſolemnization of the ſaid intended marriage s aforeſaid, there ſhall be contained all ſuch proviſos nd powers as are uſually inſerted and contained in ttlements of the like kind, and particularly ſuch roviſos and powers as ſhall be deemed proper and eceſſary for the ſafety and indemnity of the ſaid *B. D.* nd *H. R.* his executors and adminiſtrators, and any ther fee or fees, in the ſaid deed of ſettlement to be amed. And alſo all ſuch covenants or agreements

MARRIAGE

And after ſolemnization of marriage to do further acts.

Uſual proviſos, &c to be inſerted in the future ſettlement.

MARRIAGE. for each party to the other, as are or ſhall be deeme
uſual and proper, as the counſel for each party ſha
adviſe and approve of. In witneſs, &c.

Articles of Agreement entered into previous to th marriage of an infant heireſs, and preparatory to more formal ſettlement to be afterwards executed.

["This draft was prepared by the late *Mr. Pickerin* and afterwards peruſed and ſettled by *Mr. Wi brabam*, *Mr. Booth*, and the late *Lord Mansfiel* when ſolicitor general. *Pow. MSS.*"]

ARTICLES of Agreement of ſix parts indente made, concluded, and fully agreed upon, the — d of —— in the —— year of the reign, &c. and i the year of our Lord —— between (*the intend huſband*) only ſon and heir of the moſt honou able *T.* late marquis of ——— deceaſed, of the 1 part, ſir *J. R.* of &c. baronet, and dame *M.* h wife heretofore, *M. N.* and late the widow and reli and now one of the ſurviving truſtees and executo of *T. B.* late of — &c. eſquire, her late huſband al deceaſed, and which ſaid ſir *J. R.* is the guardi duly elected and appointed, of the perſon and eſta of — (*intended wife*) an infant hereinafter named, t only child of the ſaid *T. B* deceaſed, by the ſa dame *M.* now the wife of the ſaid ſir *J. R.* of t 2d part; the right honourable Henry lord —— t other ſurviving truſtee and executor of the ſaid *B.* deceaſed of the 3d part, the ſaid — (*intended wif* the infant, only daughter and heir of the ſaid *T.*

quire, deceaſed, of the 4th part, the right honour-
le *D.* earl of *W.* and *N.* and *T. S.* of — &c. eſquire,
the 5th part, and the honourable *W. M.* eſquire,
is majeſty's ſolicitor general, and ſir *R. W.* of &c.
ronet of the 6th part. WHEREAS overtures have
en ſometime ſince made for a marriage to be had
d ſolemnized, by and between the ſaid (*intended*
ſband) and *M. B.* (*intended wife*) the infant and
e eſtate and fortune to which the ſaid (*intended*
ife) the infant, is or may be entitled, is ſet forth
d ſpecified in the ſtate or particular thereof, con-
ſiſting of five different items annexed by way of
hedule to theſe preſents, and (ſave in reſpect of the
o principal ſums of £——— and £—— ſpecified
the two firſt items of the ſaid annexed particular
ſchedule, and ſave in reſpect of certain lands of
ſmall yearly value, mentioned in the fifth and laſt
m of the ſaid annexed particular or ſchedule), it
ppears that althongh the ſaid eſtate or fortune doth
incipally conſiſt of money and perſonal chattels or
ate, yet that the right, title, and intereſt of the
d — (*intended wife*) the infant, in, and to the ſame,
either future, or in nature of a reverſionary intereſt,
pectant on the death of the ſaid dame *M.* or elſe
at the ſame is contingent and uncertain, depend-
g on the chance of the ſaid (*intended wife*) ſurvi-
ng the ſaid dame *M.* her mother, ſo that the ſaid
ntended wife) hath only a poſſibility therein. AND
hereas a very conſiderable part of the ſaid fortune
d eſtate, in which the ſaid (*intended wife*) has ſuch
verſionary or contingent intereſt, or poſſibility as
oreſaid, will conſiſt of the clear ſurplus of the money
hich in the fourth item of the ſaid annexed par-

Recital that Miſs B's fortune is ſpecified on the ſchedule annexed thereto.

That except as to two ſums of £——, and £——. and ſome lands of a ſmall yearly value, all her fortune is contingent and uncertain.

That a conſiderable part of her fortune conſiſts of the ſurplus of the money which on the 4th item of the ſaid annexed particular is mentioned to

MARRIAGE.

be arising by sale of the lands of her father, T. B. devised by him for sale, to the interest of which sir J. R. in right of his wife is entitled for life.

That sir J. R. had agreed to cede his life interest in the money to arise by sale of Mr. B's. estates, but that such cession was to be void if P. R. and miss B. were both to die, &c.

ticular or schedule is specified or mentioned to b hereafter arising, or forth coming by sale of the m nors, lands, and real estates late of the said *T. B.* there in mentioned, to be by him devised to his truste named in his said will, in trust, to be sold, and t and under the devises contained in the said will, t said sir *J. R.* in right of the said dame *M.* hath interest to endure, during the life of the said dam *M.* in the yearly interest, or produce of the said su plus, and till the said several estates should be sol the said sir *J. R.* is entitled during the life of the sa dame *M.* his wife, to the overplus of the annu rents and profits of the said real estates, after a du application shall be made of so much of the said an nual rents and profits thereof, as is or shall be nece sary to keep down the interest of the debts an incumbrances charged upon, and effecting the sa premises, and to discharge the other annual outgoing issuing out of, and charged on the same premise

AND whereas in the course of the said treaty of mar riage, the said sir *J. R.* with the consent of the sa dame *M.* his wife, and in order to advance the sa (*intended wife*) in marriage, in such manner as here inafter is mentioned, did offer and propose, (ove and above such sum and sums of money, portion fortune and estate, as the said (*intended wife*) was or by possibility might be entitled to that upon th said (*intended husband*) making such settlement an provision for the said (*intended wife*) the infant, an the issue of the said intended marriage, as should b approved of by, and be to the good liking, as well o the said (*intended wife*) as of them the said sir *J. R* and dame *M.* his wife, he the said sir *J. R.* with th

ncurrence of, and in conjunction with the ſaid MARRIAGE.
me *M.* if ſuch concurrence ſhould be neceſſary,
ould and would aſſign and transfer, cede, and make
er to the ſaid (*intended huſband*) all the eſtate and
tereſt, as well of the ſaid ſir *J. R.* as of the ſaid
me *M.* during the life of the ſaid dame *M.* of and
the before mentioned annual intereſt and produce
the ſaid clear ſurplus of the money to ariſe by ſale
the ſaid manors, lands, and real eſtates, deviſed by
e will of the ſaid *T. B.* to his ſaid truſtees, to be
ld and ſpecified in the fourth item of the ſaid an-
exed ſchedule, or particular as aforeſaid, and of and
the before mentioned annual rents and profits,
uring the life of the ſaid dame *M.* of the ſaid ma-
ors, lands, and real eſtates, till ſold, to the intent
hat he the ſaid (*intended huſband*) his executors, ad-
miniſtrators, and aſſigns, as to that part of the for-
une or eſtate of the ſaid (*intended wife*) might ſo far
s was in the power of the ſaid ſir *J. R.* and dame *M.*
is wife, or either of them, be let into the immedi-
te poſſeſſion, or be in the actual receipt of the an-
ual profits thereof, but ſuch aſſignment, ceſſion, or
ransfer was to be ſubject to this expreſs proviſo and
greement, that if the ſaid (*intended wife*) and (*in-
tended huſband*) ſhould both die in the life time of
the ſaid dame *M.* without leaving any iſſue, or in caſe
they ſhould have any iſſue living at the time of the
death of the ſurvivor of them the ſaid (*intended wife*)
and (*intended huſband*) both of them dying in the life
time of the ſaid dame *M.*) if in that caſe all ſuch
iſſue ſhould die without iſſue, or fail in the life time
of the ſaid dame *M.*) then and in either of the ſaid
caſes, the ſaid aſſignment, ceſſion, or transfer, ſhould

MARRIAGE. as ſhould from time to time, during the life of h
the ſaid dame *M. R.* remain unſatisfied and undi
charged by the money to be raiſed by ſuch ſale or ſal
as aforeſaid, (other than and except the intereſt
the ſaid ſum of ——, mentioned in the firſt ſtateme
of the ſaid annexed ſchedule), and alſo diſchargi
all annual payments and outgoings which were
ſhould be iſſuing out of, or payable for the ſa
free or fee farm, rents, chantry, or other rents a
premiſes laſt mentioned, or ſo much and ſuch pa
or parts thereof, as ſhould from time to time r
main unſold and indiſpoſed of for the purpo
aforeſaid; and that he the ſaid (*intended huſband*), h
executors, adminiſtrators, and aſſigns, ſhould a
would, alſo in caſe any ſale or ſales of all or a
part of the ſaid laſt mentioned premiſes ſhould
made during the life of the ſaid dame *M.* perm
and ſuffer the ſaid ſir *J. R.* during the life of t
ſaid dame *M.* and likewiſe the ſaid dame *M.* ſ
ſurviving the ſaid ſir *J. R.* for the reſidue of h
life, to have, receive, and take the intereſt and pr
duce of ſo much and ſuch part of the money to
raiſed by ſuch ſale or ſales of the ſaid free or
farm rents, chantry, or other rents and premi
laſt mentioned, as ſhould remain after paying a
diſcharging all ſuch the debts or incumbrances
the ſaid *T. B.* and the money due upon ſuch mortg
as aforeſaid. AND whereas the ſaid *T.* late marq
of ——, late father of the ſaid (*intended huſban*
being ſeiſed in fee, or having power over ſeve
manors, lands, and hereditaments, ſituate, being,
ariſing in———, ———, and other places
the county of ——, &c. and ———, and ot

That *T.* the then laſt earl of *R.* had deviſed all his eſtates, both in *England* and *Ireland*, to truſtees upon truſt, after raiſing and paying the annual and

MARRIAGE.

and other places in the county of ——, in the kingdom of *Great Britain*; and being alſo ſeiſed in fee, or having power over ſeveral manors or lordſhips, towns, villages, farms, lands, and hereditaments, ſituate, being, or ariſing in —— and ——, in the county of ——, and in ——, in the county of ——, in the kingdom of *Ireland*, did by his laſt will in writing, bearing date the —— day of ——, and duly executed, give, deviſe, direct, limit, and appoint to, and to the uſe of his truſtees in the ſaid will named, and their heirs, all and every the manors, lands, and hereditaments in the kingdom of *Great Britain*, and all and every the manors or lordſhips, towns, villages, farms, lands, and hereditaments in the kingdom of *Ireland*, whereof he was ſo as aforeſaid ſeiſed in fee ſimple, or had power to diſpoſe, upon truſt, to raiſe thereout ſuch annual ſums for the benefit of *M.* marchioneſs of —— his wife, and of ſeveral other perſons, and ſuch ſums in groſs for additional portions for his daughters, and for divers other purpoſes therein mentioned, and ſubject thereto upon truſt, to grant, convey, ſettle, and aſſure ſo much of the ſaid premiſes as ſhould not be ſold for the purpoſes aforeſaid, and the equity of redemption of ſuch as ſhould be mortgaged to the uſe of his ſon the ſaid (*intended huſband*), for his life, with remainder to truſtees for his life, to preſerve contingent remainders, with remainder to the firſt and other ſons of the ſaid (*intended huſband*) ſucceſſively in tail male, with divers remainders over; and the ſaid teſtator thereby directed, that in the ſaid intended ſettlement there ſhould be contained the following power (that is to ſay), a power

groſs ſums of money therein mentioned, to convey the ſame to the uſe of his ſon, then earl of *R.* for his life. Remainder to firſt and other ſons in tail male, with powers of portioning, charging, &c.

MARRIAGE. to enable his ſaid ſon the ſaid *(intended huſband)*, when and as he ſhould be in the actual poſſeſſion of the ſaid premiſes ſo to be ſettled as aforeſaid, to grant, limit, and appoint by any ſuch deed or writing as therein is mentioned any rent-charge not exceeding the yearly ſum of ——, to be iſſuing out of the ſaid premiſes, or any part thereof, with ſuch remedies for the ſame as therein is mentioned, unto and to the uſe of any woman he ſhould marry, for the life of ſuch woman for her jointure, and in bar of dower; and alſo a power to enable his ſaid ſon *(the intended huſband)*, to grant, demiſe, limit, and appoint by any ſuch deed or writing as is therein alſo mentioned, the ſaid premiſes or any part thereof, unto any perſon or perſons for any term of years, to take effect on the death of the ſaid *(intended huſband)* upon truſt, to raiſe and levy by the ways therein mentioned any ſum or ſums not exceeding ——, for portions for all or any the child or children of the ſaid *(intended huſband)*, other than his eldeſt or only ſon, to be paid at ſuch times, and in ſuch parts, ſhares and proportions as the ſaid *(intended huſband)* ſhould appoint; and alſo a power to enable the ſaid *(intended huſband)* to charge the ſaid premiſes by any ſuch deed or writing as is therein alſo mentioned, with the raiſing and paying any ſum or ſums, not exceeding ——, for ſuch purpoſes as he ſhould think fit, or otherwiſe to borrow and take up at intereſt any ſum not exceeding ——, and for ſecuring the repayment thereof with intereſt, to grant, mortgage, or demiſe the ſaid premiſes for any term of years, ſo as ſuch term ſhould be made, to ceaſe on repayment of the

principal and intereſt thereby to be ſecured. And whereas the ſaid (*intended huſband*), over and above the manors or lordſhips, towns, villages, lands, and hereditaments, which paſſed by his ſaid father's will, and codicils to the truſtees therein named, and whereof he is now in poſſeſſion under the truſts of the ſaid will, and which are of very great yearly value, is ſeiſed of the inheritance to him and his heirs in fee ſimple, of and in the capital manſion houſe and family ſeat, called ——, in the ſaid county of ——, with the garden and park, or incloſed ground thereunto belonging, and of and in divers manors, lands, and hereditaments in the ſaid county of ——, which were heretofore the eſtate and inheritance of *W.* late earl of ——, all which, incluſive of the ſaid manſion houſe and park, are of the yearly value of ——, or thereabouts. And whereas, foraſmuch as the ſaid manors, lands, and premiſes, which are ſo as aforeſaid directed to be entailed by the will of the ſaid *T.* marquis of ——, and whereof the ſaid (*intended huſband*) is ſo as aforeſaid in poſſeſſion, under the truſts of the ſaid will, are of ſuch conſiderable yearly value, that if the ſaid intended marriage ſhall take effect, a very ample and ſufficient eſtate of a very great yearly revenue, over and above what is neceſſary to diſcharge all the yearly outgoings iſſuing thereout, and to keep down the incumbrances affecting the ſame, will be ſecured for and will go to the iſſue male of the ſaid intended marriage; it was therefore, during the courſe of the ſaid marriage-treaty, deemed unneceſſary and unadviſable, in regard of the ſufficiency of the aforeſaid proviſion, for the ſaid

MARRIAGE.

Intended huſband ſeiſed of other lands in fee.

MARRIAGE (*intended husband,*) to make any farther ſettlement on, or proviſion for, the iſſue male, ſave as hereinafter is mentioned. And the ſaid Sir *J. R.* and dame *M.* his wife; for and in behalf of the ſaid (*intended wife*) and alſo the ſaid (*intended wife,*) in her own behalf, were and are contented therewith, and were and are conſenting to accept thereof, and to rely thereon, together with the further proviſion hereby agreed to be made as a full, ample, adequate, and ſufficient ſettlement on and proviſion for the ſaid iſſue male. AND whereas the ſaid (*intended huſband,*) in the courſe of the ſaid treaty, did farther propoſe as follows, (that is to ſay,) In conſideration that it ſhould be expreſsly ſtipulated and agreed, that he ſhould be conſidered as, and ſhould be and become the abſolute purchaſer of all and every the ſum and ſums of money, portions, fortune, chattels, credits, and expectances ſpecified in the ſeveral items contained in the ſaid particular to theſe preſents, by way of ſchedule annexed, other than the lands ſpecified in the ſaid fifth and laſt items of the ſaid particular, to which ſhe the ſaid (*intended wife,*) was, or would, or might, by any poſſibility, be entitled either in preſent or in future, or upon any contingency of her ſurviving the ſaid dame *M.* or on any other contingency: and alſo in conſideration that he the ſaid Sir *J. R.* with the concurrence of and in conjunction with the ſaid dame *M.* his wife, if neceſſary, ſhould and would ſubject to the ſeveral powers and agreements herein after expreſſed, aſſign, make over, cede, and yield up to the ſaid (*intended husband*) all ſuch right and intereſt as the ſaid Sir *J. R.* alone, or the ſaid Sir *J. R.* and the ſaid dame *M.* his

That intended huſband propoſed to ſecure further ſums to the intended wife.

wife, jointly, or either of them apart, then had or would have for the life of the ſaid dame *M.* in the annual intereſt or produce of the ſurplus of the monies to ariſe by ſale of the eſtates mentioned in the fourth item of the ſaid annexed ſchedule, or particular, in the overplus of the yearly rents and profits of the ſame eſtates, he the ſaid (*intended husband*) ſhould and would effectually ſecure to the ſaid (*intended wife,*) the due payment of the annual ſum of —— by the year, for her ſeparate uſe, by way of pin-money, and ſhould and would grant or demiſe the ſaid manors, lands, and hereditaments, whereof he is now in poſſeſſion under the truſts of the ſaid father's will, or ſome ſufficient part thereof, to be ſituate in *England*, to truſtees for a ſufficient term of years, for ſecuring the due payment of the ſaid pin-money, and alſo ſhould and would in purſuance of and in execution of the ſaid powers and authorities given to him the ſaid (*intended huſband,*) by the will of the ſaid *T.* late marquis of ——, his father, effectually limit and appoint to and for the ſaid (*intended wife,*) the annual ſum of — for her life, to take effect on the death of the ſaid (*intended husband,*) and to be (with ſuch other proviſion as herein after is mentioned) in nature of a jointure, as herein after is expreſſed. And alſo ſhould and would by and out of the annual intereſt and produce which the ſaid Sir *J. R.* and dame *M.* his wife were entitled, ſubject to the proviſos and agreements herein after expreſſed, (ſo as aforeſaid to cede, and make over to the ſaid (*intended husband*) during the life of the ſaid dame *M.* as aforeſaid (and which intereſt and annual produce are to be produced by the monies which are to ariſe by ſale of the ſaid

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fied in the ſaid fourth item of the ſaid annexed particular or ſchedule, and therein mentioned to be ariſing or forthcoming by ſale of the eſtates therein mentioned, the ſaid (*intended husband*) did offer and propoſe by execution of the powers veſted or directed to be veſted in him by his ſaid father's will, as well to enable him to charge the ſaid premiſes thereby deviſed, with the ſum of —— for portions for his daughters and younger children, as to enable him to charge the ſame premiſes with the ſum of —— for ſuch purpoſes as he ſhould think fit. And alſo by limiting the ſaid capital manſion houſe or ſeat called ——, and the ſaid garden or park, or incloſed ground thereunto belonging, to the uſe of truſtees for a term of years, to take effect on his death, on truſt to raiſe after his death the ſum of ——, to eſtabliſh and provide an effectual fund and ſecurity for the making up and completing the ſeveral portions and fortunes of the ſaid daughters and younger ſons of the ſaid intended marriage, (but ſubject to and upon the ſeveral terms, proviſos, and conditions therein after expreſſed, and not otherwiſe) the ſeveral ſums following, (that is to ſay,) if an eldeſt or an only ſon, and one or two younger children ——, if an eldeſt or only ſon, and three younger children ——, if an eldeſt or only ſon, and four or more younger children ——, if no ſon, and one daughter ——, if no ſon, and two or more daughters ——. MARRIAGE.

AND whereas the ſaid ſeveral offers and propoſals have been mutually and reciprocally approved of, and are now agreed to by and between all and every the parties hereunto, and it is intended that the ſame ſo far as conveniently may be, ſhall be carried into The preceding propoſals have been approved.

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Witneſs. *Now therefore theſe preſents witneſs*, that it is declared and agreed, by and between all and every the ſaid parties hereto, in manner following, that is to ſay, the ſaid Sir *J. R.* doth hereby for himſelf, his heirs, executors, and adminiſtators, covenant, promiſe, and grant, to and with the ſaid (*intended husband*) his executors, adminiſtrators, and aſſigns, that he the ſaid Sir *J. R.* immediately after the ſolemnization of the intended marriage, and from time to time thereafter during his life, as often as occaſion ſhall be or require upon every reaſonable requeſt, and at the proper coſts and charges of the ſaid (*intended husband,*) his executors, adminiſtrators, and aſſigns, ſhall and will, either alone or in conjunction, with or without the concurrence of the ſaid dame *M.* his wife, which if neceſſary, he doth hereby agree from time to time, during his life to procure, do, execute, and perform, all ſuch reaſonable acts, matters, and things, as by the counſel of the ſaid (*intended husband,*) his executors, adminiſtrators, or aſſigns, ſhall at any time during the life time of the ſaid Sir *J. R.* be deemed requiſite, for the effectually aſſigning, ceding, and transferring to and veſting in the ſaid (*intended husband*) his executors, adminiſtrators, and aſſigns, or to or in ſuch other perſon or perſons as he or they ſhall appoint, ſubject to the ſeveral proviſos and agreements hereinafter expreſſed, all the eſtate, right, title, and intereſt which the ſaid dame *M.* immediately before her intermarriage with the ſaid Sir *J. R.* had, or which the ſaid Sir *J. R.* by the ſaid inter-

Covenant by Sir J. R. the lady's guardian, executor of her father will aſſign his own and wife's life intereſt in certain eſtates, to the intended huſband.

marriage did acquire, or which he or the ſaid dame *M.* his wife, or either of them now hath or have, or may have for the life of the ſaid dame *M.* or which the ſaid dame *M.* in caſe ſhe ſhall ſurvive the ſaid Sir *J. R.* may have for the reſidue of her life, in and to the annual intereſt and produce of the ſaid ſurplus of the monies ſpecified in the ſaid fourth item of the ſaid annexed ſchedule or particular, and therein mentioned to be hereafter ariſing or forthcoming by ſale of the ſeveral lands, hereditaments, and eſtates therein mentioned, and in and to the yearly rents and profits of the ſaid lands, hereditaments, and real eſtates, till ſold ſo and in ſuch manner as that the ſaid (*intended husband,*) his executors, adminiſtrators, and aſſigns, or ſuch other perſon or perſons, in truſt, for him or them, as he or they ſhall appoint, ſhall and may (ſubject to the ſeveral proviſos and agreements hereinafter mentioned) hold and enjoy all ſuch eſtate, right, title, and intereſt, and have, receive, take, and be entitled to ſuch annual intereſt and produce, and ſuch yearly rents and profits from the —— day of —— now laſt paſt, for and during the life of the ſaid dame *M.* as and for his and their own property, and in as full and ample a manner, to all intents and purpoſes, as he the ſaid Sir *J. R.* and the ſaid dame *M.* his wife, or either of them, can or may be able to aſſign, cede, transfer, or make over the ſame; and inaſmuch as the ſaid (*intended husband,*) having an entire reliance upon, and repoſing the utmoſt confidence in the ſaid dame *M. R.* hath conſented and agreed to accept of the ſeparate declaration and agreement of the ſaid dame *M.* for binding and engaging herſelf from time to time

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to make, do and execute every ſuch act, matter, and thing, in caſe of her ſurviving the ſaid Sir *J. R.* as ſhall at any time during her life be required for and for the better, further, and more perfect aſſigning, ceding, transferring, and aſſuring to, or veſting in the ſaid (*intended huſband,*) or to or in any ſuch perſon or perſons as he ſhall appoint, all the eſtate, right, title and intereſt, which in caſe ſhe ſhall ſurvive the ſaid Sir *J. R.* her huſband, ſhe ſhall or may have, of or in the ſaid annual intereſt and produce of the ſaid ſurplus monies, ſpecified in the ſaid fourth item of the ſaid ſchedule or particular, and of and in the ſaid yearly rents and profits, the ſaid lands and hereditaments therein mentioned till ſold: Now the ſaid dame *M. R.* in conſideration of the ſaid ſettlement, proviſion which the ſaid (*intended huſband,*) hath hereby agreed to make for the ſaid (*intended wife,*) her daughter, doth hereby apart for herſelf, and as if ſhe were ſole and unmarried, declare, promiſe, and engage, to and with the ſaid (*intended huſband,*) his executors, and adminiſtrators, that ſhe the ſaid dame *M. R.* ſhall and will, in caſe ſhe ſhall ſurvive, the ſaid Sir *J. R.* her now huſband, at all times during her life, make, do, execute, and perform all ſuch reaſonable acts, matters, and things, as by the counſel of the ſaid (*intended huſband,*) ſhall be deemed requiſite for or for the farther, better, or more perfect aſſigning, ceding, transferring, aſſuring, and ſure making to and veſting in the ſaid (*intended huſband,*) his executors, or adminiſtrators, or to or in ſuch other perſon or perſons as he or they ſhall appoint, all the eſtate, right, title, and intereſt, which ſhall happen to be remaining in the ſaid Dame *M. R.* in caſe ſhe

Covenant by lady R. (wife of Sir J. R. and mother of the intended wife,) to aſſign her life intereſt in the ſame eſtates, in caſe ſhe ſurvived Sir J. R. her huſband.

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ſhall ſurvive the ſaid Sir *J. R.* or which ſhe the ſaid Dame *M. R.* ſhall and may, in caſe of her ſo ſurviving the ſaid Sir *J. R.* have or be entitled unto, of, or in the annual intereſt or produce of the ſaid ſurplus of the monies mentioned in the ſaid fourth item of the ſaid annexed ſchedule or particular, and of or in the yearly rents and profits of the real eſtates therein mentioned, till ſold, as therein is expreſſed, ſo, and in ſuch manner, as that the ſaid (*intended huſband,*) his executors, adminiſtrators, and aſſigns, ſhall and may have, hold, and enjoy the ſame, (ſubject to the ſeveral proviſos and agreements hereinafter mentioned,) for and during the reſt and reſidue of the natural life of the ſaid Dame *M. R.* in as full and ample a manner as ſhe the ſaid Dame *M. R.* ſhall or may be able to aſſign, cede, transfer, or make over the ſame. And the ſaid Sir *J. R.* doth further, for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, and grant, to and with the ſaid (*intended huſband,*) his executors, adminiſtrators, and aſſigns, that for and notwithſtanding any act, matter, or thing, by the ſaid Sir *J. R.* done, committed, or ſuffered, or hereafter to be done, committed, or ſuffered to the contrary, it ſhall and may be lawful to and for the ſaid (*intended huſband,*) his executors, adminiſtrators, and aſſigns, (under and ſubject to the proviſos and agreements thereinafter mentioned,) from and immediately after the ſolemnization of the ſaid intended marriage, in the mean time, and until all and every ſuch acts, matters, and things, as aforeſaid, ſhall be completely and effectually done and performed, to have, take, and receive, during the life of the ſaid Dame *M. R.* all and every the ſaid yearly

Covenant by Sir J. R. for quiet enjoyment by the intended huſband, until ſuch aſſignments made.

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Proviſo that the eſtates ſo covenanted to be aſſigned, ſhall on the deceaſe of the intended huſband and wife, without iſſue, revert to the covenantors.

intereſt, annual rents and profits, from the ſaid — day of ——, laſt paſt, to and for his and their own uſe and benefit. Provided always, and it is hereby expreſsly declared and agreed, that all ſuch aſſignments, transfers ceſſions, acts, and deeds, ſhall be ſubject to this following expreſs proviſo, condition, and agreement, (that is to ſay,) that if the ſaid (*intended huſband*) and (*intended wife,*) ſhall both die in the life time of the ſaid Dame *M. R.* without leaving any iſſue, or if they ſhall have any iſſue living at the time of the death of the ſurvivor of them, the ſaid (*intended huſband*) and (*intended wife,*) (both of them dying in the life time of the ſaid Dame *M. R.*) if in that caſe all ſuch iſſue ſhall die without iſſue or fail, in the life time of the ſaid Dame *M. R.* then all the eſtate, right, title, and intereſt, of and in the ſaid yearly intereſt, rents, and profits, which is hereinbefore agreed to be by the ſaid Sir *J. R.* and Dame *M. R.* his wife, or either of them, aſſigned, ceded, and transferred to, and veſted in the ſaid (*intended huſband,*) his executors, adminiſtrators, and aſſigns, or to or in any perſon or perſons, in truſt for him and them, as aforeſaid, ſhall from, and immediately after ſuch time as either of the ſaid events ſhall happen, revert, and again belong to the ſaid Sir *J. R.* for and during the life of the ſaid Dame *M. R*; and if the ſaid Sir *J. R.* ſhall die in the life time of the ſaid Dame *M. R.* his wife, then to the ſaid Dame *M. R.* for and during the reſt and reſidue of the life of the ſaid Dame *M. R.* ſhe ſurviving the ſaid Sir *J. R.* in ſuch manner as if the preſent agreement touching the ſame, had never been made or entered into. And the ſaid (*intended huſ-*

band,) doth hereby agree, that if either of the ſaid MARRIAGE
events ſhall happen, the executors, adminiſtrators, or aſſigns, of the ſaid (*intended huſband,*) or ſuch other perſon or perſons as he or they ſhall nominate as a truſtee or truſtees for him or them as aforeſaid, ſhall, if neceſſary, do all ſuch reaſonable acts and things as ſhall be requiſite for the re-transferring the ſaid premiſes unto, and reinveſting the ſame in the ſaid Sir *J. R.* for his life if living, but if dead, then in her the ſaid Dame *M. R.* his wife, ſhe ſurviving him, for and during the reſidue of the life of the ſaid Dame *M. R.* in ſuch manner as by him, her, or them, ſhall be reſpectively deviſed or adviſed, and required. Provided alſo, and it is hereby in like manner expreſsly agreed, that it ſhall and may be lawful, to and for the ſaid *H.* Lord *R.* and Dame *M. R.* the wife of the ſaid Sir *J. R.* or the ſurvivor of them, or the heirs or aſſigns of ſuch ſurvivor, with or without the concurrence of the ſaid Sir *J. R.* from time to time, and at all times hereafter, in purſuance of the truſts in them repoſed by the will of the ſaid *T. B.* to ſell and diſpoſe of the aforeſaid free or fee farm rents, chantry, or other rents, of the annual value of ——, or thereabouts, and of the moiety of the manor of ——, and of the meſſuages, lands, tithes, tenements, and hereditaments, in the pariſhes of — and —, in the ſaid county of —, and in the pariſh of —, in the county of —, (being part of the eſtates deviſed by the will of the ſaid *T. B.* ſpecified in the fourth item of the ſaid annexed ſchedule or particular,) together or in parcels, to the beſt purchaſer or purchaſers that ſhall be offered for the ſame, or any part or parts thereof, ſo as that the money

Proviſo that Lord R. and Lady R. as executors, &c. may ſell, and diſpoſe of the truſt eſtates, they paying off the incumbrances upon them.

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ariſing by ſuch ſale and ſales, as far as the ſame will extend, or ſo much, or ſuch part or parts thereof as ſhall be neceſſary, ſhall, (as ſoon as conveniently may be,) be applied in paying and diſcharging ſuch of the debts or incumbrances as were charged by the will of the ſaid *T. B.* on all the ſaid eſtates by him thereby deviſed, and do now remain unpaid, and ſuch ſum or ſums of money as is or are now due and owing upon any mortgage or mortgages, which hath or have been made and executed by the truſtees in his ſaid will named, or any of them, of the ſaid free or fee farm rents, chantry, or other rents, or any other of the premiſes laſt mentioned, for the purpoſe of raiſing money to diſcharge the debts of the ſaid *T. B.* other than and except the ſum of —— mentioned in the firſt item of the ſaid annexed ſchedule or particular, which ſum is hereby agreed to be and remain a charge upon other the real eſtates of the ſaid *T. B.* originally ſubjected to the payment thereof. AND it is hereby agreed, that he the ſaid (*intended huſband,*) his executors, adminiſtrators, and aſſigns, ſhall and will, for and notwithſtanding the covenant and agreement hereinbefore contained on the part of the ſaid Sir *J. R.* for the aſſignment, ceſſion, and transfer, of all the annual intereſt, produce, rents, and profits, before mentioned, permit and ſuffer the ſaid Sir *J. R.* during the life of the ſaid Dame *M. R.*; and alſo the ſaid Dame *M. R.* ſhe ſurviving the ſaid Sir *J. R.* for the reſidue of her life, in the mean time, and until ſuch ſale or ſales ſhall be reſpectively made to hold and enjoy, and to receive and take the ſaid free or fee farm rents, chantry, or other rents, and the

Covenant by the intended huſband, to permit Sir J. and Lady R. during her life, to receive the rents of the above premiſes till ſold, they keeping down the intereſt of ſaid incumbrances.

nts, iſſues, and profits, of the ſaid moiety of the MARRIAGE.
id manors and premiſes, in —, —, and —, afore-
id, or of ſo much, or ſuch part or parts thereof, as
all from time to time remain unſold and undiſpoſed
, as aforeſaid, he and ſhe keeping down the intereſt
ſuch of the debts or incumbrances as were charged
y the will of the ſaid *T. B.* on all his real eſtates as
oreſaid, and do now remain unpaid, and alſo keep-
g down the intereſt of the money due upon any
ortgage or mortgages made by the ſaid truſtee, in
is ſaid will named, or any of them, for the purpoſe
oreſaid, or the intereſt of ſuch and ſo many of the
id debts, incumbrances, and ſums of money, as ſhall
om time to time, during the life of her the ſaid dame
M. R. remain unſatisfied and undiſcharged, by the
oney to be raiſed by ſuch ſale or ſales as aforeſaid,
other than and except the intereſt of the ſaid ſum of
— mentioned in the firſt item of the ſaid annexed
chedule,) and alſo diſcharging all annual payments
nd outgoings which are or ſhall be iſſuing out of, or
ayable for ſo much and ſo many of the ſaid free or fee
arm-rents, or other rents and premiſes laſt mentioned,
as ſhall from time to time remain unſold and undiſpoſed
of, for the purpoſes aforeſaid; and further, alſo, that
he the ſaid (*intended huſband,*) his executors, ad-
miniſtrators, and aſſigns, alſo ſhall and will, in caſe
any ſale or ſales of all or any part or parcel of the
ſaid free or fee farm-rents, or other rents and premiſes
laſt mentioned, ſhall be made during the life of the
ſaid Dame *M. R.* as aforeſaid, permit and ſuffer the
ſaid Sir *J. R.* during the life of the ſaid Dame *M. R.*
and likewiſe the ſaid Dame *M. R.* ſhe ſurviving the
ſaid Sir *J. R.* for the reſidue of her life to have,

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receive, and take the yearly intereſt and produce of ſo much of the principal ſums raiſed, or to be raiſed by ſuch ſale or ſales as ſhall remain, after paying and diſcharging all ſuch the debts or incumbrances of the ſaid *T. B.* and the money due upon ſuch mortgage or mortgages as aforeſaid. AND it is hereby mutually agreed, by and between the ſaid *(intended wife)* and the ſaid *(intended huſband,)* and it is expreſsly declared to be the full intent, meaning, and agreement, of all other the ſaid parties hereunto, each of them only anſwering for his and their own acts, and not for, or for the acts of the other of them, that in conſideration of the ſeveral ſettlements and proviſos which are hereinafter on the part of the ſaid *(intended huſband,)* agreed to be made and executed for and upon the ſaid *(intended wife,)* and the iſſue of the ſaid intended marriage, and for and in conſideration of the eſtates which by the will of the ſaid *T.* late Marquis of *R.* are deviſed to or in truſt for, and directed to be entailed on the iſſue male of ſaid — *(intended huſband,)* and of the benefits and advantages which will be derived to, and be had and enjoyed by the ſaid — *(intended wife,)* and her iſſue from the ſaid — *(intended huſband,)* by and under the deviſes contained in, and the ſettlements directed to be made by the ſaid laſt will of the ſaid *T.* Marquis of *R.* deceaſed, all and every the ſum and ſums of money, portions, fortunes, chattels, and eſtates, and all and every the rights, intereſts, credits, and expectances, ſpecified in the ſeveral items of the ſaid annexed particular or ſchedule, (other than ſuch lands as are ſpecified in the ſaid fifth and laſt item of the ſaid particular or ſchedule,) to which the ſaid

Agreement or declaration by the parties, that in conſideration of the proviſion after agreed to be made by the intended huſband for the intended wife.

All the ſums of money, portions, fortune, chattels, and eſtate, and all rights, intereſts, and expectances, ſpecified in the items of the ſaid ſchedule,

(intended wife) is, or will, or may, by any poſſibility, be entitled either in preſent or in future, or upon any contingency, either of her ſurviving the ſaid dame *M.* her mother, or otherwiſe ſhall, from, and immediately after the ſolemnization of the ſaid intended marriage, be and become the ſole property of the ſaid *(intended huſband)* and he ſhall be deemed to have acquired by virtue of the ſeveral agreements herein contained, the whole and ſole right, title, and intereſt, in and to the ſame ſeveral eſtates and premiſes, and ſhall be, and be conſidered as the abſolute purchaſer thereof, ſo as that he the ſaid *(intended huſband)* his executors, adminiſtrators and aſſigns, ſhall and may have, hold, and enjoy the ſame, as and for his and their own goods, chattels, money, effects, property, and eſtate, for evermore, and that when and ſo ſoon as ſhe the ſaid *(intended wife)* ſhall attain the age of 21 years, ſhe the ſaid — *(intended wife)* ſhall and will do, execute, and perform, and conſent to all ſuch acts, matters, things, and proceedings as ſhall be deemed requiſite by the counſel of the ſaid — *(intended husband,)* his executors, adminiſtrators and aſſigns, for the more effectually veſting her ſaid fortune, eſtate and effects, ſo ſpecified in the ſaid ſeveral items of the ſaid annexed particular or ſchedule, other than the ſaid lands ſpecified in the ſaid 5th and laſt item of the ſaid annexed ſchedule, in the ſaid *(intended husband)* his executors, adminiſtrators and aſſigns, and for the enabling him and them to have, receive, and recover, and to take and enjoy the ſame accordingly, provided that as to the ſaid lands and premiſes ſo ſpecified in the ſaid 5th and laſt item of the ſaid annexed particular or ſchedule, he the ſaid *(in-*

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excepting 5th to which ſhe may by any poſſibility be entitled.

Shall become the ſole property of the intended huſband.

And that when ſhe ſhall attain 21, ſhe ſhall do all neceſſary acts to veſt the ſame in him.

except as to a part.

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tended husband) ſhall only have and enjoy ſuch eſtate and intereſt therein, and ſuch powers and authorities over the ſame as he the ſaid —*(intended husband)* ſhall take or acquire, or be entitled to take or acquire by the rights of marriage. AND theſe preſents further witneſs, that for the providing for the due execution of the ſeveral propoſals and agreements ſo made and entered into by the ſaid — *(intended husband)* in the courſe of the ſaid marriage-treaty as aforeſaid, he the ſaid *(intended husband)* doth hereby for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe and agree to and with the ſaid, *H.* lord *R.* and Sir *J. R.* their executors and adminiſtrators, that he the ſaid *(intended husband,)* ſhall and will immediately after the ſaid intended marriage ſhall take effect, effectually grant and demiſe, unto the ſaid *H.* lord *R.* and Sir *J. R.* their executors, adminiſtrators and aſſigns, for the term of —— years, if he the ſaid — *(intended husband)* ſhall ſo long live, ſome ſufficient part of the ſaid manors and hereditaments, whereof he the ſaid —*(intended husband)* is entitled to be tenant for life, under the truſts of his ſaid father's will, and ſhall and will declare the truſt of the ſaid term ſo, and in ſuch manner as that the ſaid *H.* lord *R.* and Sir *J. R.* their executors, adminiſtrators and aſſigns, ſhall be directed to ſtand intereſted in the ſaid term upon truſt, to levy and raiſe yearly and every year during the lives of them the ſaid *(intended husband)* and *(intended wife)* by and out of the annual rents and profits of the ſaid premiſes, the yearly ſum of ——— pounds of lawful money of *Great Britain*, tax free, to be paid quarterly to ſuch perſon and perſons, and for ſuch uſes as the ſaid

Covenant by the intended huſband purſuant to powers in his late father's will to ſecure an annuity to the intended wife in the nature of pin-money.

— (*intended wife*) ſhall from time to time during the ſaid intended coverture, appoint, and in default of appointments, into her own hands for her ſeparate uſe in nature of pin-money, to be free from the power or controul of the ſaid — (*intended huſband*). AND upon farther truſt to permit the ſaid — (*intended huſband*) to receive all the overplus of the ſame rents and profits for his own uſe and benefit, during all the reſidue of the ſaid term. AND the ſaid — (*intended huſband*) doth hereby for himſelf, his heirs, executors, and adminiſtrators, further covenant, promiſe and agree to and with the ſaid *H.* lord *R.* and ſir *J. R.* their executors, adminiſtrators, and aſſigns, that immediately after the ſaid intended marriage ſhall be had and ſolemniſed, he the ſaid — (*intended huſband*) ſhall and will in purſuance of, and in execution of the powers and authorities to him given, in and by his ſaid father's will, by ſome good or effectual deed in writing, to be by him ſigned, ſealed, and delivered in the preſence of two or more credible witneſſes, grant, limit, or appoint an annual ſum or rent-charge of —— tax free, to be iſſuing out of all and every the manors, meſſuages, lands, tenements, and hereditaments, whereof he the ſaid — (*intended huſband*) is now in poſſeſſion, by and under the truſts of his ſaid father's will, or out of ſome ſuch competent part thereof, as the ſaid — (*intended wife*) and *H.* lord *R.* and ſir *J. R.* or the ſurvivor of them, or the executors or adminiſtrators of ſuch ſurvivor, ſhall deem ſufficient unto, upon, or to the uſe of the ſaid — (*intended wife*) for her life, to take effect immediately after the deceaſe of the ſaid (*intended huſband*) and to be payable in ſuch manner, and at ſuch

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Covenant by intended huſband to ſecure a rent-charge to the intended wife for her jointure.

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Declaration that until ſuch jointure ſhall be well ſecured, certain premiſes ſhall ſtand chargeable with the payment of it.

manors, lands, and hereditaments, given, appointed, or deviſed, by the ſaid will and codicils of the ſaid *T.* late marquis of *R.* ſhall ſtand and be charged and chargeable with and for the raiſing, paying, and anſwering unto the ſaid *(intended wife)* and her aſſigns, for her life, the ſaid annual ſum or yearly rent-charge of —— to take effect on the death of the ſaid *(intended husband)* and to be paid and payable by quarterly payments in every year during the life of the ſaid *(intended wife)* tax free, and without any deductions, on uſual feaſt days (that is to ſay) the annunciation of the bleſſed Virgin Mary, the feaſt of St. John Baptiſt, the feaſt of St. Michael the Archangel, and the birth of our Lord Chriſt, the firſt payment to be made on ſuch of the ſaid feaſt days as ſhall firſt happen after the death of the ſaid *(intended husband)*. AND the ſaid *(intended husband)* doth hereby for himſelf, his heirs, executors and adminiſtrators, covenant and agree to and with the ſaid *H.* lord *R.* and Sir *J. R.* their executors, adminiſtrators and aſſigns, that if the ſaid intended marriage between him and the ſaid *(intended wife)* ſhall take effect, and the ſaid *(intended wife)* ſhall ſurvive the ſaid — her *(intended husband)* then, and in ſuch ſaid caſe, the ſaid annual ſum or rent-charge of —— herein before agreed to be provided for and appointed unto the ſaid *(intended wife)* for her life, to take effect on the death of the ſaid *(intended husband)* ſhall from time to time after the deceaſe of the ſaid *(intended husband)* during the reſidue of the life of the ſaid *(intended wife)* be duly and punctually anſwered and paid out of the ſaid hereditaments and premiſes intended to be charged therewith, by quarterly payments in each year, at

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And that the premiſes intended to be charged therewith, ſhall ſtand chargeable in like manner.

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such days and times, and in such manner and form as herein before is expressed, in part of the jointure of the said (*intended wife,*) and by and under the agreement in these presents contained, she shall after the decease of the said (*intended husband*) during the residue of her life, be entitled peaceably and quietly, and without any kind of denial, trouble, molestation, or interruption, to hold, perceive, receive, take, and enjoy the said annual sum or yearly rent-charge of— so to be issuing out of the said manors and lands comprised in the said will and codicils of the said late marquis, as well in case the said (*intended husband*) shall live to make and execute such grant and appointment of the said annual sum or yearly rent-charge of —— to and for the benefit of the said (*intended wife,*) as in case the said (*intended husband*) shall happen to die before such grant and appointment shall be effectually made. AND for making up such yearly provision as was and is so as aforesaid, proposed and agreed to be made for the support of the said (*intended wife*) in nature of a jointure, he the said (*intended husband*) doth hereby for himself, his heirs, executors, administrators and assigns, covenant and agree to and with the said *H.* lord *R.* and Sir *J. R.* their executors, administrators, and assigns, that he the said (*intended husband*) his executors, administrators and assigns, shall and will, when and so soon as the said Sir *J. R.* and dame *M.* his wife, shall have executed, done, and performed, all such reasonable acts, matters, and things as shall be so as aforesaid required by the said (*intended husband,*) his executors or administrators, for the effectually assigning, ceding, and transferring to, and vesting in the

And for making up such provision as was proposed to be made for the intended wife by way of jointure.

The intended husband covenants.

ſaid *(intended husband,)* his executors, adminiſtrators, and aſſigns, to, or in ſome perſon or perſons in truſt for him, or them, all ſuch eſtate, right, title, and intereſt as the ſaid dame *M.* immediately before her intermarriage with the ſaid Sir *J. R.* had, or now hath, or the ſaid Sir *J. R.* and the ſaid dame *M.* or either of them, may have for her life, in and to the annual intereſt or produce of the monies ſpecified in the ſaid 4th item of the ſaid annexed ſchedule or particulars therein mentioned, to be ariſing, or forthcoming by ſale of the ſeveral lands, hereditaments, and eſtates therein mentioned, and in and to the yearly rents and profits of the ſaid lands, hereditaments and eſtates, till ſold ſo as that the ſaid *(intended husband)* his executors, adminiſtrators and aſſigns, may as aforeſaid, have and receive the ſame annual intereſt, rents and profits, and be entitled thereto, as from the ſaid — day of — laſt paſt, but ſubject to the proviſos and agreements herein before mentioned, concerning the ſame premiſes reſpectively, ſhall and will by good and ſufficient aſſignments, and aſſurance, ſuch as ſhall be to the ſatisfaction of the ſaid *H.* lord *R.* and Sir *J. R.* or the ſurvivor of them, or the executors, or adminiſtrators of ſuch ſurvivor, and alſo to the ſatisfaction of the ſaid dame *M.* the wife of the ſaid Sir *J. R.* if ſhe ſhall be living, by and out of the annual intereſt or produce of the ſaid monies, ſpecified in the ſaid 4th item of the ſaid annexed ſchedule or particular, or by and out of the yearly rents and profits of the lands, hereditaments, and real eſtates before mentioned, ſo agreed to be ceded, aſſigned, transferred and veſted by the ſaid Sir *J. R.* and dame *M.* his wife, to and in the ſaid *(intended huſ-*

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band), or to or in ſome perſon or perſons in truſt for him as aforeſaid, and likewiſe by and out of ſuch eſtate and intereſt in the ſaid ſeveral premiſes ſo ſpecified in the 4th item of the ſaid annexed ſchedule or particular, as it is hereby before agreed, which the ſaid (*intended husband*) is to acquire, and is to be, or become the purchaſer of as aforeſaid, ſo far as the ſaid ſeveral funds ſhall extend to anſwer the ſame effectually, grant, ſettle, and ſecure into the ſaid *H.* lord *R.* and Sir *J. R.* their executors, adminiſtrators, and aſſigns, in truſt, and for the benefit of the ſaid (*intended wife*) the farther annual ſum of —— of lawful monies of *Great Britain*, tax free, during her life to take effect, immediately from and after the death of the ſaid (*intended husband*,) and to be paid to her, by like quarterly payments, at the feaſts aforeſaid, without any deduction, the firſt payment thereof to be made on ſuch of the ſaid feaſt-days as ſhall firſt happen after the deceaſe of the ſaid (*intended husband*). AND further alſo that in the mean time, and until ſuch good and ſufficient aſſignments or aſſurance ſhall be completely and effectually made and executed by the ſaid (*intended husband*,) his executors, adminiſtrators, or aſſigns, for granting, ſettling, and aſſuring, the ſaid clear annual ſum of ——, in truſt of the ſaid (*intended wife*,) during her life, in manner aforeſaid, ſhe the ſaid (*intended wife*,) and her aſſigns, ſhall and may, from and immediately after the deceaſe of the ſaid (*intended husband*) have, receive, and take by and out of the annual intereſt or produce of the ſaid monies ſpecified in the ſaid fourth item of the ſaid annexed ſchedule or particular, or by and out of the yearly rents and profits of the

By and out of the intereſt in the premiſes ſpecified in the ſaid 4th item which he was to acquire and become the purchaſer of as aforeſaid, to grant, ſettle, and aſſure unto the intended wife a further jointure.

And in the mean time the ſaid jointure to be chargeable thereupon.

lands, hereditaments, and real eſtate before mentioned, and ſo agreed to be ceded, aſſigned, transferred, and veſted, by the ſaid ſir *J. R.* and dame *M. R.* his wife, to and in the ſaid (*intended husband*) as aforeſaid, or to and in ſuch perſon or perſons as he ſhall appoint, and likewiſe by and out of the eſtate and intereſt in the ſaid ſeveral premiſes ſo ſpecified in the ſaid fourth item of the ſaid annexed ſchedule or particular, which the ſaid (*intended husband*) is by the agreements herein before contained, ſo to acquire, and become the purchaſer of, as aforeſaid, ſo far as the ſaid ſeveral funds ſhall extend to anſwer the ſame, the ſaid annual ſum of ——, tax free, during her life, by equal quarterly payments, on the feaſt days aforeſaid, for and during her life, clear of all deductions; the firſt payment thereof to be made on ſuch of the ſaid feaſt days as ſhall firſt happen after the deceaſe of the ſaid marquis. AND it is hereby mutually declared and agreed, by and between all the parties to theſe preſents, that the ſaid hereinbefore mentioned yearly rent-charge of ——, ſo to be charged, limited, appointed, or ſecured, or agreed and intended to be charged, limited, and appointed, or ſecured, to or to the uſe of the ſaid — (*intended wife,*) for her life, together with the ſaid laſt mentioned annual ſum of —— by the year, ſo agreed to be granted to the ſaid *H.* lord *R.* and ſir *J. R.* their executors, adminiſtrators, and aſſigns, in truſt, and to be ſecured to and for the ſaid (*intended wife,*) as aforeſaid, is and ſhall, by and with the expreſs acceptance and good liking of the ſaid (*intended wife,*) be in nature of a jointure, and in lieu, and full bar, and ſatisfaction, of all the dower and thirds at the common

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The lady's jointure to be in bar of dower.

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law, which the ſaid (*intended wife*) ſhall, or may, or might otherwiſe have claim on, or be intitled to, by or out of all or any the manors, lands, and hereditaments in the kingdom of *Great Britain* and *Ireland*, or elſewhere, whereof the ſaid (*intended huſband*) is, or during the ſaid intended coverture ſhall be ſeiſed, for any eſtate of inheritance whatſoever. And for the completing of all and every the proviſions ſo as aforeſaid propoſed and agreed to be made for the ſaid (*intended wife*,) in caſe the ſaid intended marriage ſhall take effect, he the ſaid (*intended huſband*,) doth hereby for himſelf, his heirs, executors, and adminiſtrators, covenant and agree, to and with the ſaid *H.* lord *R.* and ſir *J. R.* their executors, adminiſtrators, and aſſigns, that in caſe the ſaid intended marriage ſhall take effect, and the ſaid (*intended husband*) ſhall happen to die in the life-time of the ſaid (*intended wife*,) then the heirs, executors, or adminiſtrators, of the ſaid (*intended huſband*,) ſhall and will, within one month after his deceaſe, pay unto the ſaid (*intended wife*,) her executors or adminiſtrators, the principal ſum of —— of lawful money of *Great Britain*, for her or their own ſole uſe and benefit. And for the further executing ſo much of the ſaid propoſals as doth relate to the ſelling of the ſaid capital meſſuage or manſion-houſe, called ——, and the ſaid gardens, park, and incloſed ground, for the providing for the raiſing of the ſum of ——, for ſuch purpoſes as are hereinafter mentioned. And for and in conſideration of the ſaid intended marriage, and of the ſaid ſeveral agreements herein contained, he the ſaid (*intended husband*,) doth hereby for himſelf and his heirs,

Covenant by intended huſband to pay a ſum of money to intended wife if ſhe ſurvive him.

Covenant by intended huſband to veſt

further covenant and agree, to and with the ſaid *H.* lord *R.* and ſir *J. R.* and their heirs, that immediately after the ſaid intended marriage ſhall be ſolemnized, or before the ſolemnization thereof, the ſaid (*intended husband*) ſhall and will by good and ſufficient conveyances in the law, ſettle and aſſure unto the ſaid *H.* lord *R.* and ſir *J. R.* and their heirs, the ſaid capital meſſuage or manſion-houſe, called —, with the appurtenances, and the gardens and park, or incloſed ground called the park, now therewith uſed, by proper names and deſcriptions to and upon them the ſaid *H.* lord *R.* and ſir *J. R.* and their heirs, to the uſes following, (that is to ſay,) to the uſe of the ſaid *H.* lord *R.* and ſir *J. R.* their executors, adminiſtrators, and aſſigns, for the term of — years upon the truſts, and ſubject to the proviſos hereinafter agreed to be declared and provided concerning the ſame term, with remainder, ſubject thereto, to the uſe of the ſaid (*intended husband,*) and his aſſigns, for and during the term of his natural life, without impeachment of or for any manner of waſte, and with full power to commit waſte as well in the view of or near the ſaid manſion-houſe, as elſewhere, with remainder to truſtees and their heirs, during the life of the ſaid (*intended husband,*) on truſt, to preſerve contingent remainder to the uſe of the ſaid *W. M.* and ſir *R. W.* their executors, adminiſtrators, and aſſigns, for a term of — years, on the truſts hereinafter agreed to be declared, with remainder to the uſe of the firſt and every other the ſon and ſons of the body of the ſaid (*intended husband,*) on the body of the ſaid (*intended wife*) to be begotten, ſucceſſively in tail male, but ſubject to the

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lands in truſtee for — years.

Further term of — years created ſubject to preceding term.

MARRIAGE.

Truſts of the firſt term declared for ſecuring pin-money.

proviſo hereinafter mentioned, with reverſion to the right heirs of the ſaid (*intended husband*,) and it is hereby declared that as to the truſts of the ſaid terms of years, the ſame in ſuch ſettlements, ſhall be declared ſo and in ſuch manner as that the truſtees of the ſaid term ſhall be directed to ſtand intereſted in the premiſes therein to be compriſed, upon truſt, for the better anſwering and ſecuring to the ſaid (*intended wife*,) by all proper ways and means, the due payments of ſuch and ſo much of the ſaid annual ſum of —— hereby agreed to be paid to her in nature of pin-money, as from time to time ſhall happen to be in arrear, and ſubject thereto, upon truſt, to pay the overplus of the ſaid rents and profits, and to permit the ſaid capital meſſuage and premiſes to be held and enjoyed by the ſaid (*intended husband*) during his life, with proviſos, declaring that when all the aforeſaid truſts of the ſaid term ſhall be ſatisfied or diſcharged, the ſaid term ſhall ceaſe, and be void. And it is hereby alſo declared, that as to the truſts of the ſaid term of — years, of and in the ſaid capital meſſuages or manſion-houſe, garden, park, premiſes before mentioned, the ſame ſhall be declared to be limited to the ſaid *W. M.* and ſir *R. W.* their executors, adminiſtrators, and aſſigns, for the levying or raiſing by mortgage or ſale of all or any part of the premiſes in the ſaid term, to be compriſed from and immediately after the deceaſe of the ſaid (*intended husband*,) or in his life time, if he ſhall ſo direct, by writing under his hand, atteſted by two or more credible witneſſes, the full principal ſum of —— to be by the ſaid *W. M.* and ſir *R. W.* and the ſurvivor of them, and the executors and adminiſtra-

Truſt of the ſecond term of --- years, declared for raiſing ---- for purpoſes after mentioned.

ors of ſuch ſurvivor, forthwith paid into the hands of them the ſaid *D.* earl of —— and *T. L.* their executors, adminiſtrators, or aſſigns, for the intents and purpoſes hereinafter expreſſed. And it is hereby declared and agreed, by and between all the ſaid parties to theſe preſents, that the ſaid *D.* earl of ——, and *T. L.* their executors, adminiſtrators, and aſſigns, ſhall accordingly ſtand poſſeſſed of, and intereſted in the ſame, upon ſuch truſts, and for ſuch intereſts and purpoſes as hereinafter are declared of and concerning the ſaid ſum. And the ſaid (*intended husband*) doth hereby, for himſelf, his heirs, executors, and adminiſtrators, covenant and agree, to and with the ſaid *W. M.* and ſir *R. W.* their executors, adminiſtrators, and aſſigns, that the ſaid capital meſſuage or manſion-houſe, garden, park, and premiſes laſt mentioned, ſhall, at all times hereafter, be, continue, and remain, of full, ſufficient, and ample value, for the anſwering, levying, and raiſing, by the ways and means hereinbefore mentioned, the aforeſaid principal ſum of ——, for the purpoſes hereinafter expreſſed, or ſo much thereof as according to the truſts, and ſubject to the proviſos hereinafter declared and expreſſed, of and concerning the ſame, ought to be levied and raiſed, for the intents and purpoſes hereinafter mentioned. AND the ſaid (*intended husband*) doth farther, for himſelf, his heirs, executors, and adminiſtrators, hereby covenant and agree, to and with the ſaid *D.* earl of *W.* and *T. L.* their executors, adminiſtrators, and aſſigns, that immediately after the ſaid intended marriage ſhall take effect, he the ſaid (*intended husband*) ſhall and will, in purſuance of and in execution of

Covenant by intended huſband that the eſtate ſhall remain of ſufficient value for anſwering the ſums hereby charged upon it.

Covenant by intended huſband to charge premiſes with —— for purpoſes after mentioned.

MARRIAGE. the power and authority to him given in that behalf, in and by the ſaid laſt will of the ſaid *T.* late marquis of ——. his father, by ſome ſufficient deed of writing, to be ſealed and delivered by him, in the preſence of two or more credible witneſſes, charge all and every the lands and hereditaments whereof he the ſaid (*intended husband*) is now in poſſeſſion, by and under the truſts of his ſaid father's will, or ſome of ſuch competent part of the ſaid premiſes, as they the ſaid *D.* earl of —, and *T. L.* or the ſurvivor of them, or the executors or adminiſtrators of ſuch ſurvivor, ſhall deem proper and ſufficient, with and for the raiſing and paying unto them the ſaid *D.* earl of —, and *T. L.* their executors, adminiſtrators, and aſſigns, on the truſts, and for the purpoſes hereinafter mentioned, the full ſum of —— to be raiſed and paid immediately after the deceaſe of the ſaid (*intended husband,*) or in his life time if he ſhall ſo direct, by any writing under his hand, with ſuch intereſt for the ſame, until paid, as to him ſhall ſeem meet; and ſhall and will at the ſame time, by ſome ſuch deed or writing as aforeſaid, limit and appoint all and every the ſame lands and hereditaments whereof he the ſaid (*intended husband*) is now in poſſeſſion, unde the truſts of his ſaid father's will, unto ſome proper perſon or perſons, for a term of — years, in ſuch manner as ſhall be conformable to the powers and directions contained in the ſaid will, in truſt, for the better ſecuring and anſwering the true payment of the ſaid ſum of ——, unto them the ſaid *D.* earl of —, and *T. L.* their executors, adminiſtrators, and aſſigns, but ſo as the ſaid annual ſum, or yearly rent-charge of —— ſo to be

harged, limited, and appointed, or agreed to be harged, limited, or appointed, to or to the uſe of the aid (*intended wife*) for her life, as and for part of her ortune as aforeſaid, ſhall be no ways prejudiced or af-ected thereby, and they the ſaid *D.* earl of —, and *T.* *L.* their executors, adminiſtrators, and aſſigns, ſhall tand and be poſſeſſed of, and intereſted in the ſaid um of ——, upon ſuch truſts as are hereinafter ex-reſſed. AND the ſaid (*intended husband*) doth alſo or himſelf, his heirs, executors, and adminiſtrators, ereby covenant and agree, to and with the ſaid *D.* arl of ——, and *T.* *L.* their executors, adminiſtra-ors, and aſſigns, that when and ſo ſoon as any rea-onable requeſt, ſhall after the ſolemnization, of the aid intended marriage, be made to him the ſaid (*intended husband*) by them the ſaid *D.* earl of ——, nd *T.* *L.* or the ſurvivor of them, or the executors r adminiſtrators of ſuch ſurvivor, for that purpoſe, ſuch requeſt to be ſignified by writing under his or their hands, he the ſaid (*intended husband,*) ſhall and will, in purſuance of and in execution of the powers and authorities to him given, in and by the ſaid laſt will of the ſaid *T.* late marquis of ——, his father, by ſome ſufficient deed or writing under his hand and ſeal, to be atteſted by two or more credible witneſſes, but ſubject and without prejudice to the ſaid annual ſum or yearly rent charge of ——, ſo agreed to be charged, limited, and appointed to and to the uſe of the ſaid (*intended wife*) for her life, as and for part of her jointure as aforeſaid, grant, de-ſire, limit and appoint, all and every the lands and hereditaments, whereof he the ſaid (*intended husband*) is now in poſſeſſion, by and under the truſts of his

MARRIAGE.

Covenant by intended huſband to veſt eſtates in truſtees for raiſ- of — years, for raiſing portions for younger children.

MARRIAGE

ſaid father's will, or ſome ſuch competent part of the ſaid premiſes, as they the ſaid *D.* earl of ——, and *T. L.* or the ſurvivor of them, or the executors, adminiſtrators, or aſſigns of ſuch ſurvivor, ſhall deem proper and ſufficient, unto and to the uſe of the ſaid *D.* earl of ——, and *T. L.* their executors, adminiſtrators, and aſſigns, for the term of —— years, to commence and take effect from and immediately after the deceaſe of the ſaid (*intended husband*) upon the truſts following, (that is to ſay,) upon truſt, by ſale or mortgage of the ſaid premiſes, or any part thereof, or by ſuch other ways and means as are ſpecified for that purpoſe in the will of the ſaid *T.* late marquis of ——, but ſubject as therein is mentioned, to raiſe and levy for all and every the child or children of the ſaid (*intended husband*) by the ſaid (*intended wife*), (not being any of them an eldeſt or only ſon) who ſhall comply with the terms and conditions hereinafter mentioned, with reſpect to his and their doing ſuch acts and things, as ſhall be neceſſary for the aſſigning and transferring, or the binding or obliging him or themſelves to aſſign and transfer to the ſaid (*intended husband,*) his executors, adminiſtrators, and aſſigns, in caſe of the death of the ſaid (*intended wife,*) in the life-time of the ſaid dame *M. R.* all his, her, and their right, title, ſhare, and intereſt, in and to the clear ſurplus of the money to ariſe by ſale of the real eſtates of the ſaid *T. B.* deviſed to be ſold by his ſaid will, the full ſum of —— of lawful money of Great Britain, for the portion or portions of all and every ſuch child or children, ſo not being any of them an eldeſt or only ſon, to go and be allotted to or between any of them,

or to be ſhared or divided among them all, in ſuch parts, ſhares, and proportions, and to be paid and payable at ſuch ages, days, and times, and with ſuch yearly ſum for his, her, and their maintenance in the mean time, until his, her, and their reſpective portions ſhall become payable, as he the ſaid (*intended husband,*) ſhall, by any deed or writing under his hand and ſeal, atteſted by two or more credible witneſſes, direct or appoint: and for want of ſuch direction and appointment, to be equally divided between all ſuch children, ſhare and ſhare alike, the parts and ſhares of ſuch of them as ſhall be a ſon or ſons to be reſpectively paid and payable, ſubject to the proviſo hereinafter mentioned, at his or their age or ages of 21 years, and to ſuch of them as ſhall be a daughter or daughters, at her or their reſpective age or ages of 21 years, or day or days of marriage, which ſhall firſt happen, provided ſuch ſons and daughters do not attain ſuch ages, or times of payment, until after the deceaſe of the ſaid (*intended husband*): but if any ſuch ſon or ſons, daughter or daughters, ſhall reſpectively attain his, her, or their ſaid age or ages, or times of payment, in the life-time of the ſaid (*intended husband,*) then ſubject to the proviſo hereinafter mentioned, the payment of his, her, and their parts and ſhares, of and in the ſaid portion or ſum of ——, to be poſtponed until the end of ſix calendar months, next after the deceaſe of the ſaid (*intended husband,*) and to be then payable with intereſt for the ſame, at the rate of —— by the year for each ſum of ——— thereof, to be computed from the time of his death, unleſs he ſhall otherwiſe direct, by writing under his hand, atteſted

To be divided between them in ſuch ſhares, &c. as their father ſhall appoint,

and for want of appointment, to all equally, and to be paid to ſons at 21, & daughters at 21, or marriage,

unleſs their father be then living,

in which caſe the payment to be poſtponed till 6 months after his deceaſe,

with intereſt in the mean time.

MARRIAGE. by two or more credible witneſſes, and in each ſuch grant, demiſe, limitation, or appointment, ſo to be made, there ſhall be inſerted ſome proviſo, declaring to the effect following, (that is to ſay,) that if any ſuch younger ſon or ſons ſhall depart this life, or become an eldeſt or only ſon, or any of ſuch daughter or daughters ſhall die before, his, her, or their ſhare or ſhares ſhall become payable, the ſame ſhall go and belong to the ſurvivors or ſurvivor of them, and be paid and payable at ſuch days and times as herein before is or therein ſhall be declared, touching his, her, or their original ſhare or ſhares of and in the ſaid ſum of ——, and ſuch ſurviving ſhare or ſhares ſhall be again liable to ſuch further conditions and right of accruer, as the ſaid ſhare or ſhares are ſo as aforeſaid, hereby agreed to be made liable to, and therein alſo ſhall be a proper clauſe declaring, that in default of appointment by the ſaid (*intended husband,*) touching the yearly allowances to be made for the maintenance of the ſaid child and children, all and every ſuch child and children, after the deceaſe of the ſaid (*intended husband,*) ſhall be allowed for his, her, and their maintenance in the mean time, and until his her, and their portions ſhall become payable, ſuch yearly ſum as will be equivalent o the yearly intereſt of their portions, after the rate of £4 by the year for each ſum of £100, of and in his, her, or their ſhare or ſhares, parts, and proportions and in the ſaid ſum of ——, to be paid by four quarterly payments in every year. And in ſuch grant, demiſe, limitation, or appointment, ſo to be made as aforeſaid, there ſhould be contained a proper proviſo, declaring, that when all the truſts of the ſaid term of —— years, ſhall be performed and ſatisfied,

In the future ſettlement ſhall be contained proviſion for ſurvivorſhip between the children.

And alſo for their maintenance and education.

or otherwiſe diſcharged, and the ſaid truſtees ſhall be reimburſed all their coſts and charges in the execution of the ſaid truſts, then the ſaid term ſhall be void. PROVIDED always, and it is hereby declared and agreed, by and between the ſaid ſeveral parties to theſe preſents, that if the ſaid (*intended husband,*) ſhall happen to depart this life, not having made any ſuch appointment touching the raiſing, or directing to have raiſed the ſaid laſt mentioned ſum of ——, before any ſuch requeſt as herein before is mentioned, ſhall have been made, to require and engage him in purſuance and execution of the ſaid powers and authorities ſo veſted in him, by his ſaid father's will as aforeſaid, to make ſuch grant, demiſe, limitation, or appointment, for the raiſing the ſaid ſum of ——, in the manner herein before mentioned, then and in that caſe, theſe preſent articles ſhall be conſidered as an abſolute agreement in equity, by and on the behalf of the ſaid (*intended husband,*) to execute the ſaid powers, and to make ſuch grants, demiſe, limitation, and appointment, touching the raiſing the ſaid ſum of ——, yet ſo as nevertheleſs no ſon or daughter of the ſaid (*intended husband,*) by the ſaid (*intended wife,*) ſhall or may become entitled to any part, ſhare, or proportion thereof, unleſs he or ſhe ſhall comply with the terms and conditions herein before and hereinafter mentioned, with reſpect to his or her aſſigning and transferring, or binding and obliging themſelves to aſſign and transfer to the ſaid (*intended husband,*) his executors, adminiſtrators, and aſſigns, in caſe of the death of the ſaid (*intended wife,*) in the life-time of the ſaid dame *M. R.* all his or her right, title, claim, demand, ſhare, and intereſt in and to the clear ſurplus of the money to ariſe by

Proviſo that in default of huſband's appointment for the raiſing of portions, the preſent articles ſhall be ſufficient.

MARRIAGE.

Declaration of truſt of ſum to be raiſed by term of 500 years, and alſo of the ſum of — to be charged upon the premiſes, to be in augmentation of portions of younger children, varying according to their number.

ſale of the ſaid real eſtates of the ſaid *T. B.* deviſed to be ſold by his will. And as for and concerning the ſaid principal ſum of —— herein before directed to be raiſed by virtue of the truſts to be as aforeſaid declared of and concerning the ſaid term of —— years, agreed to be limited to the ſaid *W. M.* and Sir *R. W.* of and in the ſaid capital meſſuage or manſion-houſe called ——, and the gardens, parks, and incloſed ground before mentioned. And alſo as for and concerning the ſaid principal ſum of —— herein before agreed to be charged on the ſaid manors, lands, and hereditaments, whereof the ſaid (*intended husband,*) is now in poſſeſſion, under the truſts of his ſaid father's will as aforeſaid, both which ſaid principal ſums are ſo as aforeſaid, directed to be paid into the hands of them the ſaid *D.* earl of ——, and *T. L.* their executors, adminiſtrators, and aſſigns. IT is hereby declared and agreed, by and between all and every the ſaid parties to theſe preſents, that they the ſaid *D.* earl of —— and *T. L.* and their executors, adminiſtrators, and aſſigns, ſhall ſtand poſſeſſed of and intereſted in the ſaid two principal ſums of —— and —— upon truſt, that they the ſaid *D.* earl of ——, and *T. L.* and the ſurvivor of them, and the executors and adminiſtrators of ſuch ſurvivor, do and ſhall in caſe there ſhall be iſſue of the body of the ſaid (*intended husband,*) on the body of the ſaid (*intended wife,*) to be begotten, an eldeſt ſon and three or more younger children, ſons or daughters, or in caſe there ſhall be iſſue of the body of the ſaid (*intended husband,*) on the body of the ſaid (*intended wife,*) an only ſon and three or more daughters, by and out of the ſaid principal ſum of ——, ſo to be paid into his or their hands as aforeſaid, levy and raiſe ſuch

ſum and ſums of money as ſhall be ſufficient to make up and complete, together with the ſaid ſum of —— to be raiſed under the truſts of the ſaid term of —— years, the portions of ſuch younger children and daughters to the ſums following, (that is to ſay,) if there ſhall be only three ſuch younger children, there being an eldeſt ſon, or if there ſhall be only three ſuch daughters, there being an only ſon as aforeſaid, do and ſhall out of the ſaid principal ſum of ——, to be paid into his or their hands, levy and raiſe the ſum of ——, to make up and complete the portions of ſuch younger ſons and daughters, to the ſum of —— to go and be allotted to or between any of them, or to be ſhared or divided among them, all in ſuch parts, ſhares, and proportions, and to be paid and payable at ſuch ages, days, and times, (but ſubject to the proviſo herein after contained) and with ſuch yearly ſums for his, her, and their maintenance in the mean time, until his, her, and their reſpective portions ſhall become payable, as herein before is agreed to be provided, directed, and declared of and concerning the ſaid ſum of —— to be raiſed under the truſts of the aforeſaid term of — years, agreed to be limited and appointed as aforeſaid, of and concerning the manors, lands, and hereditaments, whereof the ſaid *(intended husband,)* is now in poſſeſſion, under the truſts of his late father's will; and in caſe there ſhall be an eldeſt ſon, and no more ſuch younger children of the body of the ſaid *(intended husband,)* by the ſaid *(intended wife,)* or if there ſhall be an eldeſt ſon, and four or more ſuch younger children, of the body of the ſaid *(intended husband,)* by the ſaid *(intended wife,)* or if there ſhall be an only ſon, and four

MARRIAGE. or more daughters of the body of the ſaid *(intended husband)* by the ſaid *(intended wife,)* then do, and ſhall by and out of the ſaid principal ſum of —— ſo to be paid into the hands of the ſaid truſtees, or by application of the ſaid whole ſum of ——, levy, and raiſe ſuch ſum and ſums of money as ſhall be neceſſary to make up and complete together with the ſaid ſum of ——, to be raiſed under the ſaid truſts, of the ſaid term of — years, the portions of ſuch younger children or daughters, to the full ſum of ——, to go and be allotted to or between any of them, or to be ſhared or divided among them all, in ſuch parts and proportions, and to be paid and payable ſubject to the proviſo herein after mentioned, at ſuch ages, days, and times, and with ſuch yearly ſums for his, her, and their maintenance in the mean time until his, her, and their reſpective portions ſhall become payable, as herein before is agreed to be provided, directed, and declared, of and concerning the ſaid ſum of ——, to be raiſed under the truſts of the aforeſaid term of — years agreed to be limited and appointed as aforeſaid, of and concerning the manors, lands, and hereditaments, whereof the ſaid *(intended husband,)* is now in poſſeſſion, under the truſts of his ſaid father's will. AND it is hereby further declared and agreed, by and between all the ſaid parties to theſe preſents, that in caſe there ſhall be no ſon of the ſaid *(intended husband,)* on the body of the ſaid *(intended wife,)* begotten, born in his life-time, or after his deceaſe, or there being any ſon or ſons in caſe he and they ſhall all die without iſſue male, before any of them ſhall attain the age of 21 years, then, if in either of the ſaid caſes, there ſhall be any daughter or daughters of the body of the ſaid *(intended husband,)*

Proviſion in caſe there ſhall be no ſon, but only daughters.

on the body of the ſaid (*intended wife*) begotten, they the ſaid *D.* earl of ——, and *T. L.* and the ſurvivor of them, and the executors and adminiſtrators of ſuch ſurvivor, do and ſhall, by and out of the ſaid principal ſums of —— and ——, ſo to be paid into his and their hands as aforeſaid, levy and raiſe ſuch ſum and ſums of money as ſhall be ſufficient to make up and complete, together with the ſaid ſum of ——, to be raiſed under the truſts of the ſaid term of — years as aforeſaid, the portion of ſuch daughter or daughters, to the ſums following, (that is to ſay) if there ſhall be only ſuch one daughter, then, do and ſhall levy and raiſe, by and out of the ſaid principal ſum of — to be paid into his and their hands, the ſum of — to make up and complete the portion of ſuch only daughter the ſum of —— to be paid and payable, ſubject to the proviſos hereinafter contained, to ſuch daughter, at ſuch days and times, and with ſuch yearly allowance for her maintenance in the mean time, as the ſaid (*intended husband*) ſhall in manner aforeſaid, direct or appoint. And for default of ſuch directions or appointments then to be paid and payable, ſubject to the proviſo hereinafter contained, at her age of — years, or day of marriage, which ſhall firſt happen, in caſe neither of them ſhall happen in the life time of the ſaid (*intended huſband*) but in caſe ſuch daughter ſhall attain her ſaid age of —— years, or be married in the life time of the ſaid (*intended husband,*) then the payment of ſuch portion to be poſtponed, ſubject to the proviſo hereinafter contained, until the end of ſix calender months, next after his deceaſe, and ſhall be then payable with the intereſt for the ſame, at the rate of four

MARRIAGE.

MARRIAGE. per cent. by the year, from the time of his death, and ſuch daughter ſhall have a yearly allowance for her maintenance in caſe no appointment ſhall be made by the ſaid *(intended husband)* in the mean time and until her ſaid portion ſhall be payable after the rate of £4 by the year, for each ſums of £100 from the time of the deceaſe of the ſaid *(intended husband,)* but if there ſhall be two or more ſuch daughters, then do, and ſhall, by and out of the ſaid two principal ſums of —— and ——, to be paid into the hands of them the ſaid truſtees, or by application of the whole of the ſaid two principal ſums, levy and raiſe ſuch ſum and ſums of money, as ſhall be ſufficient to make up, and complete together, with the ſaid ſum of —— ſo to be raiſed, under the truſts of the ſaid term of —— years, as aforeſaid, the portions of ſuch daughters, to the full ſum of ——, to go and to be allotted, to or between any of them, or to be ſhared or divided among them all, in ſuch parts, ſhares, and proportions, and to be paid and payable, ſubject to the proviſo herein after contained, at ſuch ages, days, and times, and with ſuch yearly allowances for their maintenance in the mean time, as the ſaid *(intended huſband)* ſhall in manner aforeſaid, direct or appoint, and for default of ſuch directions or appointment, then to be paid and payable, ſubject to the proviſo hereinafter contained, to ſuch daughters, at their reſpective ages of 21 years, or at their reſpective days of marriage, which ſhall firſt happen, in caſe ſuch ages or marriages ſhall not happen in the life time of the ſaid *(intended husband,)* but in caſe any one or more of ſuch daughters ſhall attain the age of 21 years, or be married in the life time of the ſaid *(intended husband,)* then the payment of the portion

or portions of ſuch daughter or daughters ſo attaining the ſaid age, or marrying as aforeſaid, to be poſtponed, ſubject to the proviſo hereinafter contained, until the end of ſix calendar months, next after his deceaſe, and then ſhall be paid and payable with intereſt for the ſame, at the rate of £4 by the year, for each ſum of £100, from the time of his death, and ſuch daughters ſhall reſpectively have yearly allowances for their maintenance (in caſe no appointment ſhall be made by the ſaid *(intended husband)* in the mean time, until their reſpective portions ſhall be payable after the rate of £4 by the year, for each ſum of £100, from the time of the deceaſe of the ſaid *(intended husband)*. PROVIDED always, and it is hereby declared and agreed, by and between all the parties to theſe preſents, that all and every the ſum and ſums of money, which, in and by theſe preſents are directed to be paid to the ſaid *D.* earl of ——, and *T. L.* or the ſurvivor of them, or the executors or adminiſtrators of ſuch ſurvivor, in order to make up and complete the portions of ſuch children as aforeſaid, to the ſums hereinbefore mentioned, ſhall be raiſed, and paid in the order and courſe following, (that is to ſay) in the firſt place, by, and out of, or by application of the whole of the ſaid ſum of ——, to be paid into their hands by the ſaid *W. M.* and Sir *R. W.* their executors and aſſigns, by virtue of the truſts ſo as aforeſaid, to be declared of, and concerning the ſaid term of —— years, ſo as aforeſaid, to be to them limited, of, and in the ſaid capital meſſuage, lands, and premiſes hereinbefore mentioned, ſo far as the ſaid principal ſum of —— will extend, and in the next place, by and out of the ſaid

MARRIAGE

The order in which the ſaid ſums are to be raiſed

MARRIAGE. principal ſum of ——, to be paid into the hands of them the ſaid *D.* earl of *W.* and *T. L.* their executors, adminiſtrators, and aſſigns, by virtue of the charge or appointment ſo to be made thereof, by the ſaid (*intended husband*) in purſuance of the ſaid laſt will of his ſaid late father, of the lands and hereditaments deviſed thereby, but no part of the ſaid ſum of —— ſhall be made uſe of, or applied, for the purpoſes aforeſaid, ſo long as any part of the ſaid principal ſum of —— ſhall remain undiſpoſed of, or unapplied. PROVIDED alſo, and it is hereby declared and agreed, that if there ſhall be no ſuch younger ſon or ſons, daughter or daughters of the body of the ſaid (*intended husband*) on the body of the ſaid (*intended wife,*) begotten, or being any ſuch younger ſon or ſons, daughter or daughters, in caſe all of them ſhall die, or depart this life, before he, ſhe, or they ſhall become entitled to have and receive the ſaid portion or portions hereby agreed to be provided for him, her, and them; then all and every the truſts, declarations, appointments, and agreements hereinbefore contained and agreed upon, touching the ſame, ſhall be abſolutely null and void, and then the ſaid two principal ſums of —— and —— ſo to be paid into the hands of the ſaid *D.* earl of ——, and *T. L.* their executors, adminiſtrators, and aſſigns, aforeſaid, ſhall be diſpoſed of as follows, (that is to ſay) as to the ſaid ſum of —, the ſame ſhall be deemed to be, and become the perſonal eſtate of the ſaid (*intended husband,*) and the ſame ſhall be paid to him, his executors, adminiſtrators, or aſſigns, and as to the ſaid ſum of ——, if the ſame ſhall have been raiſed, the ſame ſhall be repaid to the per-

Proviſo in caſe of there being no younger children, the portions not to be raiſed.

ſon or perſons who ſhall be then next entitled to the remainder and inheritance of the ſaid capital manſion-houſe, immediately expectant on the ſaid term of — years, therein to be limited as aforeſaid, but if the ſame ſhall not have been raiſed, the ſame ſhall ſink and not be raiſed at all, and the ſaid premiſes ſo compriſed in the ſaid term of — years, ſhall be abſolutely freed and diſcharged, of and from all truſts relating to the raiſing thereof. PROVIDED always, and it is hereby further declared and agreed, by and between the ſaid parties to theſe preſents, that to the end that none of the ſeveral ſums, which ſhall come to the hands of the ſaid *D.* earl of —, and *T. L.* or the ſurvivor of them, or the executors, adminiſtrators or aſſigns, of ſuch ſurvivor, ſhall or may lie dead from the time that the ſame ſhall be paid, into his, or their hands, until the ſame ſhall come to be diſpoſed of, to anſwer the truſts and purpoſes aforeſaid, and that ſome profit may in the mean time be made thereof, it ſhall and may be lawful to and for the ſaid *D.* earl of —, and *T. L.* and the ſurvivor of them, and the executors, adminiſtrators, and aſſigns, of ſuch ſurvivor, in the mean time, and until the ſame ſum and ſums ſhall be applied, and diſpoſed of, according to the truſts in the ſaid intended ſettlement, to be declared, by and with the conſent and approbation of the ſaid (*intended husband*) and (*intended wife,*) or the ſurvivor of them, teſtified by writing, under his, her, or their hands, in caſe they, or the ſurvivor of them, ſhall be then living, and if they ſhall be then dead, then by the proper authority of the ſaid truſtees for the time being, to place out ſuch ſum or ſums of money, at intereſt in the public funds, or in govern-

MARRIAGE.

Power for truſtees to inveſt monies in their hands, upon government ſecurities.

MARRIAGE. ment, or upon real ſecurities, and alſo from time to time, with ſuch conſent and approbation as aforeſaid, or of their proper authority, as the caſe may happen, to call in the principal money ſo placed out, and the ſame again to place out at intereſt, on new or other ſecurities, and ſo from time to time to vary, alter and tranſpoſe the ſaid ſecurities, as he or they ſhall think proper, and the intereſt, dividends, profits, and annual produce ariſing from ſuch ſtocks, funds, and ſecurities, ſhall be paid unto, preſerved, and kept for the benefit of ſuch perſon or perſons as ſhall be entitled to the principal of the money ſo placed out, by, or under the truſts, limitations, declarations or agreements, hereby agreed to be limited and declared, of, and concerning the ſame ſums reſpectively. PROVIDED always, and it is hereby expreſsly declared and agreed by and between all the the ſaid parties to theſe preſents, and it is the true intent and meaning of them and every of them, that if any younger ſon or ſons, daughter or daughters, for whom any ſuch portion or portions, ſum or ſums of money, as is, or are ſo hereby agreed, to be provided or directed to be raiſed, as aforeſaid, ſhall happen to attain the age or ages, time or times, wherein or whereupon, he, ſhe, or they, are by virtue of the agreement hereinbefore contained, to become entitled to have, and actually receive the portion or portions ſo hereby provided for him, her or them, in the life time of the ſaid dame *M.* the wife of the ſaid Sir *J. R.* then and in that caſe, for and notwithſtanding any of the truſts, declarations or directions hereinbefore contained, they the ſaid *D.* earl of — and *T. L.* and the ſurvivor and ſurvivors of

Proviſo that the children's portions not to be paid on their refuſing to execute an aſſignment of certain intereſts,

them, and the executors, adminiſtrators and aſſigns, of ſuch ſurvivor, ſhall (unleſs the ſaid (*intended huſband*) ſhall by ſome writing or writings, under his hand, to be atteſted by two or more credible witneſſes, expreſsly direct the contrary, as hereinafter is mentioned,) forbear to pay the ſeveral and reſpective ſhare and ſhares, parts and proportions of each and every ſuch younger ſon and ſons, daughter and daughters of, in, and to the ſaid ſeveral ſums of money hereinbefore directed, to be paid by him and them, for or towards the portion or portions of the younger ſon or ſons, daughter or daughters of the ſaid (*intended husband*) by the ſaid (*intended wife*) and ſhall and do with-hold and detain the ſame, but without prejudice to the raiſing any ſum or ſums hereby before agreed, or directed to be paid to him or them, for his, her, or their maintenance, during his or their minority, until ſuch time as the ſaid younger ſon or ſons, daughter or daughters, and the perſons legally entitled under any of them, do, and ſhall reſpectively (ſo ſoon as he, ſhe, or they ſhall be enabled thereto by law,) perform and execute all ſuch reaſonable acts, matters, and things, as ſhall be neceſſary or requiſite, for the effectual aſſigning, making over, and transferring to, and veſting in, or the binding and obliging of him, her, or themſelves, and his, her, and their repreſentatives, to aſſign, tranſfer, and make over, and cauſing to be veſted in the ſaid (*intended husband,*) his executors, adminiſtrators, and aſſigns, in caſe of the death of the ſaid (*intended wife,*) in the life time of the ſaid dame *M. R.* her mother, the whole ſhare and intereſt, right, title, claim and demand, which each ſuch younger ſon or

MARRIAGE.

unleſs the father otherwiſe direct.

MARRIAGE. ſons, daughter or daughters, ſhall then have, or ſha
or may at any time or times hereafter, by any futur
event, or contingency, be or become reſpectively en
titled unto, into, or out of the ſaid clear ſurplu
ſpecified in the ſaid 4th item of the annexed ſchedul
or particular of the monies to ariſe by the ſale of th
eſtate of the ſaid *T. B.* deviſed by his will, to th
intent that each ſuch ſhare and intereſt whatſoever
veſted or contingent, may reſpectively (as far as th
ſame may, or can be,) be and become the abſolut
property of the ſaid (*intended husband,*) his executors
adminiſtrators and aſſigns, according to the true in-
tent and meaning of theſe preſents. AND it is hereby
declared and agreed, that if any ſuch younger ſon o
ſons, ſhall after his or their attaining the age of 21
years, or any ſuch daughter or daughters, ſhall afte
her or their attaining the ſaid age of 21 years, or th
huſband or huſbands of any ſuch daughter or daugh-
ters, ſhe or they marrying reſpectively, before her o
their ſaid age or ages of 21 years, or if any perſon o
perſons (being of ſufficient ability or capacity fo
that purpoſe) who ſhall be legally entitled, by, o
under any ſuch younger ſon or daughter, ſhall actual-
ly refuſe, or wilfully neglect, for the ſpace of ſix
calendar months, to do, execute, and perform, all
ſuch reaſonable matters and things as ſhall be neceſ-
ſary and requiſite for the effectual aſſigning, making
over, and transferring to, and veſting in, or the binding,
or obliging, him, her, or themſelves, and his, her,
and their repreſentatives, to aſſign, make over, and
transfer, or cauſe to be veſted in the ſaid (*intended
husband,*) his executors, adminiſtrators and aſſigns,
the whole ſhare, and intereſt, right, title, claim, and

And on refuſing to perform the conditions of the ſettlements, to loſe their portions.

demand of each ſuch younger ſon and ſons, daughter and daughters reſpectively, whether veſted or contingent in and to the ſaid clear ſurplus of the monies to ariſe by ſale of the eſtates of the ſaid *T. B.* deviſed by his ſaid will, then and in that caſe (unleſs the ſaid *intended husband*) ſhall otherwiſe direct as hereinafter is mentioned) the perſon or perſons who ſhall ſo actually refuſe, or willingly neglect as aforeſaid, ſhall not have, or take any kind of benefit or advantage, by or under any of the truſts or agreements hereinbefore contained, or by, from, or out of any ſum or ſums of money, hereinbefore directed to be paid for, or towards the portion or portions of any ſuch younger ſon or ſons, daughter or daughters, neither ſhall any limitations or appointment of any ſuch portion or portions, (unleſs the ſaid (*intended husband*) ſhall otherwiſe direct, as hereinafter is mentioned,) be in that caſe deemed, or conſidered as having been hereby agreed to be made or executed by the ſaid (*intended husband*) for any ſuch younger ſon or ſons, daughter or daughters, by, or under any of the powers or authorities contained in the will of the ſaid *T.* late marquis of —, his father, but all and every the manors, lands, and hereditaments, deviſed by the ſaid will, ſhall (unleſs the ſaid (*intended husband*) ſhall otherwiſe direct, as hereinafter is mentioned) be, and remain in the ſame plight and condition as the ſame would have been, in caſe the ſaid powers and authorities had never been agreed to be executed in favour of any ſuch younger ſon or ſons, daughter or daughters. And it is further agreed, that then, and in that caſe, the ſhare or ſhares of the perſon or perſons ſo as aforeſaid, actually refuſing, or wilfully neglect- MARRIAGE.

MARRIAGE. ing, of and in the ſaid two ſeveral principal ſums of —— and —— ſo to be paid into the hands of them the ſaid *D.* earl of ——, and *T. L.* their executors and adminiſtrators, as aforeſaid, ſhall (unleſs the ſaid (*intended husband*) otherwiſe direct, as hereinafter is mentioned) go and remain unto, and for the benefit of ſuch perſon and perſons as the ſame principal ſums of —— and —— are hereinbefore declared and agreed, to go, remain, and belong unto, in the caſe or contingency hereinbefore mentioned, of there being no younger ſon or ſons, daughter or daughters at all, of the ſaid (*intended husband*) on the body of the ſaid (*intended wife*) begotten, or in the caſe or contingency hereinbefore mentioned, of there being any ſuch ſon or ſons, daughter or daughters, and all of them dying before any of them ſhall attain the age or ages, days or times, wherein or whereupon he, ſhe, or they, is, or are by virtue of the agreements hereinbefore to become entitled to have and receive the portion or portions hereinbefore agreed to be provided for him, her, and them. PROVIDED neverthleſs, that if the ſaid (*intended husband*) by any deed or inſtrument, or by his laſt will and teſtament in writing, or by ſome other writing under his hand, every ſuch deed, inſtrument, laſt will and other writing, to be atteſted by two or more credible witneſſes, ſignify his mind to be, that all or any part of the ſaid portion or portions ſhall be raiſed and paid, notwithſtanding any ſuch refuſal, or neglect to comply with the terms and conditions hereinbefore mentioned, concerning the aſſigning and transferring the ſhare and intereſt of ſuch child or children, in the monies to ariſe by ſale of the ſaid

Unleſs their father ſhall otherwiſe direct.

eſtates of the ſaid *T. B.* and ſhall for that purpoſe, by ſuch deed inſtrument, laſt will, or writing, ſo ſigned and atteſted as aforeſaid, direct the ſaid portion or portions, or any part thereof, to be raiſed and paid at all events, then, and in that caſe, the ſame portion and portions, or ſo much thereof as ſhall ſo be directed to be raiſed and paid, ſhall, for and notwithſtanding any thing herein before contained, be raiſed and paid accordingly, and every ſuch child or children, for and to whom the ſame ſhall be ſo directed to be raiſed and paid, ſhall be and become entitled hereunto, in the ſame manner as if he, ſhe, or they, had not refuſed or neglected to comply with, but had actually complied with the terms and conditions before mentioned, concerning his, her, or their aſſigning and transferring his, her or their ſhare and intereſt of and in the ſaid monies, to ariſe by ſale of the ſaid eſtates of the ſaid *T. B.* PROVIDED always, and it is hereby agreed, by and between all the parties to theſe preſents, that in the ſaid intended ſettlement ſo to be made as aforeſaid, of the ſaid capital meſſuage or manſion-houſe, called ——, and of the ſaid gardens, park, and premiſes, before mentioned, there ſhall be inſerted an expreſs proviſo, whereby it ſhall be provided and declared, that if any ſon or ſons of the body of the ſaid (*intended husband,*) on the body of the ſaid (*intended wife*) to be begotten, who, by virtue of the limitation to be contained in the ſaid ſettlement, ſhall be entitled to the remainder and inheritance expectant on the death of the ſaid (*intended husband,*) of and in the premiſes therein to be compriſed, ſhall, after he or they ſhall attain his or their age or ages of 21 years

MARRIAGE.

Like condition, &c. in caſe of an eldeſt ſon refuſing.

MARRIAGE. reſpectively, actually refuſe, or for the ſpace of 12 calendar months wilfully neglect to do, perform, and execute, all ſuch acts, matters, and things, as ſhall be neceſſary or requiſite for the effectual aſſigning, making over, and transferring to, or veſting in, or binding, or obliging him, her, or themſelves, to aſſign, make over, and transfer, and to veſt in the ſaid (*intended husband,*) his executors, adminiſtrators, and aſſigns, the whole ſhare and intereſt, right, title, claim, and demand, which each ſuch ſon and ſons ſhall then have, or ſhall or may, at any time or times hereafter, by any future event or contingency, be or become reſpectively entitled in, to, or out of the ſaid clear ſurplus of the monies to ariſe by ſale of the eſtates of the ſaid *T. B.* deviſed by his will, that then, and in that caſe, the uſe and eſtate, of and in the ſaid capital meſſuage or manſion-houſe, gardens and parks, or incloſed ground, by the ſaid intended ſettlement, to be limited to ſuch ſon or ſons, who ſhall ſo refuſe or neglect as aforeſaid, ſhall from thenceforth, unleſs the ſaid (*intended husband*) ſhall otherwiſe direct, by ſome deed or inſtrument in writing, or by his laſt will, or by ſome other writing under his hand, (every ſuch deed, inſtrument, and writing, to be atteſted by two or more credible witneſſes,) ceaſe, determine, and be void, to all intents and purpoſes, as if ſuch ſon or ſons ſo refuſing or neglecting, was or were actually dead, without iſſue male of his or their body or bodies, and that then, and in that caſe, the ſaid capital meſſuage or manſion-houſe, gardens, park, or incloſed ground, in the ſaid intended ſettlement to be compriſed, ſhall go and remain, and ſhall (unleſs the ſaid (*intended husband*) ſhall ſo otherwiſe direct, as laſt

before is mentioned,) be immediately vested in the person or persons to whom the next estate in remainder would, by virtue of the limitations in such settlement to be contained, belong or appertain in possession, in case such son or sons so refusing or neglecting, was or were so actually dead without issue male of his or their body or bodies, as aforesaid. PROVIDED always, and it is hereby declared and agreed, that the aforesaid trustees, or any or either of them, their, any, or either of their heirs, executors, administrators, or assigns, respectively, shall not, neither shall any of them be answerable or accountable for any money to be received by virtue of, or under any of the trusts, declarations, and agreements, hereby limited and declared, or agreed to be limited and declared, any otherwise than for such sum and sums as they shall respectively actually receive, and shall not be answerable or accountable for the acts, receipts, neglects, or defaults, of the other of them, but each only for his own acts, receipts, neglects, and defaults, respectively, nor for any proper goldsmith, banker, or other person, with whom, or in whose hands any part of such monies shall or may be deposited or lodged for safe custody, nor for any involuntary loss of all or any of the said sum or sums of money, neither shall they the said trustees, or any or either of them, their, any, or either of their heirs, executors, administrators, or assigns, respectively, be answerable or accountable for the insufficiency of any security or securities in which the said monies, or any part thereof, shall or may be placed out or invested, nor for any misfortune, loss, or damage, which may happen in the

MARRIAGE.

Proviso for trustees indemnity.

Not to be answerable for each other.

MARRIAGE.

execution of the aforeſaid truſts, or any of them, or in relation thereto, except the ſame ſhall happen by or through his or their reſpective wilful defaults; and alſo, that they the ſaid truſtees, and each and every of them, their, each, and every of their executors and adminiſtrators, ſhall and may, by and out of the monies which ſhall come to their reſpective hands, by virtue of the truſts hereby repoſed, or agreed to be repoſed in them, as aforeſaid, deduct, retain to, and reimburſe himſelf and themſelves reſpectively; and alſo ſhall and may, by and out of ſuch monies, allow to his and their co-truſtees and truſtee, all ſuch coſts, charges, damages, and expences, as he or they ſhall and may reſpectively ſuſtain, expend, diſburſe, be at, or be put into, for or by reaſon of the truſts hereby repoſed, or to be repoſed in him and them as aforeſaid, or in or about the management or execution thereof, or in any wiſe relating thereunto.

Truſtees to repay themſelves expences.

AND it is hereby declared and agreed, that in the ſaid intended ſettlement, ſo agreed to be made and executed as aforeſaid, there ſhall be inſerted all ſuch further and other clauſes, powers, proviſos, declarations, agreements, and things, as well for the farther explaining thoſe preſents, as for the convenience, eaſe, and benefit, of all or any of the parties thereto, or to theſe preſents, and for the indemnity of all and every the truſtees therein to be named, and the authorizing them to deduct and retain their coſts, and to do all other ſuch reaſonable acts, as they the ſaid (*intended husband*) *D.* earl of —, *T. L. W. M.* ſir *J. R.* dame *M.* his wife, and *H.* lord *R.* or the ſurvivor of them, or the executors or adminiſtrators of ſuch ſurvivor, or their or any of their counſel learned

All other proper proviſos &c. to be inſerted in the intended ſettlement.

in the law, ſhall judge proper and reaſonable in that behalf, or as are uſual in the like caſes. PROVIDED always, and it is hereby laſtly declared and agreed, by and between all the ſaid parties hereto, that theſe preſents, or any matter or thing herein contained, ſhall not in any wiſe extend, or be conſtrued to extend to prejudice, impeach, weaken, or affect the eſtate and intereſt limited and appointed to the ſaid dame *R.* during her life, for her jointure, in and by a certain indenture dated the — day of ——, ——, of, in, or out of the meſſuages, lands, and tenements, in the ſame indenture particularly mentioned, or the right and title which ſhe or the ſaid ſir *J. R.* in her right now hath in and to the intereſt of the ſum of ——, ſpecified in the third item of the ſaid annexed ſchedule or particular, or any right or title which they or either of them ſhall or may happen to have or become entitled to, of and in the ſame principal ſum of ——, by virtue of, or under certain articles of agreement, dated the — day of ——, ——, in the ſaid annexed ſchedule or particular mentioned and taken notice of. In witneſs, &c. MARRIAGE.

Proviſos that theſe articles ſhall not prejudice the jointreſs of the ſettled premiſes.

THE SCHEDULE referred to by the above articles, containing a ſtate or particular, of ſuch eſtate or fortune as (*intended wife*) named in the ſaid articles, now is, and hereafter may be, intitled to viz, a ſum of — , &c. &c.

Title of ſchedule.

Operative Part of Articles previous to the Marriage of a Ward of Chancery.

THIS indenture, made the — day of ——, &c. Between *F. R.* (*the intended husband,*) of the firſt

MARRIAGE.

Parties.

part, *S. F.* (*the intended wife,*) ſpinſter, an infant of the age of — years, or thereabouts, youngeſt daughter of ſir *T. F.* late of &c. bart. deceaſed, of the ſecond part, *G. C.* of &c. (ſurviving teſtamentary guardian of the ſaid (*intended wife*) and *W. T.* of &c. of the third part, the right honourable *C.* earl of —, and the Rev. *B. R.* of &c. of the fourth part, and *S. C.* of &c. and *H. A.* of &c. of the fifth part.

Statement of Recitals.

WHEREAS (*a*) the ſaid (*intended husband*) is entitled, in fee ſimple, to the manor of—, &c. ſubject to a mortgage thereof, made to the earl of ——, for ſecuring ——, and intereſt, and alſo to other manors, &c. and particularly to a manor worth, by computation, to be ſold ——— and places by deed, roll, or inſtrument in writing, executed previous, and in conſideration of the marriage of the ſaid ſir *J. F.* the father, who has aſſigned twenty exchequer annuities of — each, to truſtees, in truſt, to ſell and lay out the money in the purchaſe of freehold and copyhold premiſes, to be ſettled to the uſe of ſir *J. F.* for life, remainder to his wife for life, remainder to the firſt and other ſons in tail, the remainder to truſtees for —years, upon truſts that never did or can take effect; remainder to ſir *J. F.* and his heirs. AND whereas the wife died in life time of ſir *J. F.* and 18 of the ſaid annuities were laid out for the purpoſes before mentioned, and the remaining two numbers, &c.

(*a*) The recitals in this precedent appear to have been not only greatly curtailed by the copier but without much attention to accuracy. The operative part, is however, ſo well drawn, that I conceived it to be indiſputably entitled to a place in the collection.

are now ſtanding in the names of *D. M.* and *F. G.* executors of the ſurviving truſtee, in the laſt ſettlement. AND whereas propoſals had been laid before the maſter by the ſaid *(intended husband,)* for making a ſettlement upon the preſent *(intended wife,)* and the iſſue of their intended marriage, and the ſaid *(intended husband,)* by the ſaid propoſal, has propoſed that the ſum of —, the ſaid *(intended wife's)* part or ſhare of the —, 3 per cent. &c. and —— the ſaid *(intended wife's)* ſhare of —— caſh, as aforeſaid, ſhould be transferred and paid to him the ſaid *(intended husband,)* as ſoon after the ſolemnization of the ſaid intended marriage as conveniently may be, in conſideration whereof, &c. the *(intended husband)* propoſes to ſettle divers eſtates to the uſes, &c. and the ſaid *(intended husband)* alſo propoſes that a particular eſtate ſhould be ſold to diſcharge mortgages on other eſtates; and as to the eſtate of the aforeſaid ſir *J. F* deceaſed, grandfather to the ſaid *(intended wife,)* conſiſting of freehold and copyhold eſtates, of one undivided moiety whereof the ſaid *(intended wife)* is tenant in tail, in poſſeſſion of the ſaid leaſehold eſtate held of the biſhop of —, on three lives, as aforeſaid, and to the other undivided moiety of which the ſaid *(intended wife)* is entitled as ſpecial occupant to her and the heirs of her body; of the two exchequer annuities, and other large perſonal property, which by the ſaid decree was directed to be ſold and laid out in lands, according to the will of the ſaid ſir *J. F.* and codicil of which lands, when purchaſed, the ſaid *(intended wife)* will be tenant in tail, and in the mean time entitled to a moiety of intereſt. The ſaid *(intended husband)* propoſed, that

MARRIAGE.

MARRIAGE. if the ſaid (*intended wife*) lived to attain 21 years, her eſtate tail of and in a moiety of the ſaid freehold and copyhold eſtate, and the remainders over ſhould be barred and deſtroyed, and then ſettled to the uſe of (*intended huſband*) for life, remainder to wife for life, remainder to children in tail male, remainder as wife ſhould direct, and in default thereof, to her heirs, with a power for wife, if ſhe ſurvived (*intended huſband*) to charge — thereon, and the laſt mentioned eſtate to be ſettled in like manner or as nearly as its nature would permit, and the ſame in regard to the eſtates ſo to be purchaſed as aforeſaid; and in caſe of the death of her ſiſter *E.* without iſſue, her moiety to be ſettled alike, and that in the ſettlement to be made on ſaid (*intended wife*) coming of age, ſuch other powers and clauſes ſhould be inſerted as (*intended huſband,*) and the (*intended wife*), and *G.C.* and *W. T.* and the ſurvivor of them, and his heirs ſhould think fit, and as to the eſtates of ſir *F.T.* conſiſting of freehold eſtates in — and —, and the — ſtock, and the reſidue of his perſonal eſtate, or the lands to be purchaſed thereby, according to the will and codicil aforeſaid of the ſaid ſir *T.* given to truſtees in truſt to raiſe —— upon the truſts aforeſaid, which by the ſaid decree are ordered to be raiſed as therein mentioned, upon the truſt of the ſaid will; the (*intended huſband*) agreed, that when raiſed, the intereſt thereof ſhould be paid to her ſeparate uſe, and in the mean time a moiety of the rents of the ſaid ſir *T.*'s eſtate, and of the intereſt of —— ſhould be paid to her for her ſeparate uſe and diſpoſal, and that her eſtate tail in ſuch freehold eſtate, or what remained thereof, as ſhould not be ſold for

the purpoſe aforeſaid, or her eſtate tail in a moiety of the ſaid lands, to be purchaſed by the ſaid —, according to ſir *J.*'s codicil, in caſe ſuch purchaſe is made, and alſo of copyhold eſtates, which he had provided to the uſe of his will, and alſo of large perſonal property, did by this will and teſtament in writing, bearing date, &c. give — in truſt, for his ſecond ſon *T.* and the reſidue of real and perſonal eſtate to his eldeſt ſon *F. J.* for life, remainder to his firſt and other ſons ſucceſſively in tail male, and for want of ſuch iſſue, to the uſe of his teſtator's ſecond ſon the aforeſaid ſir *F. T.* then *F. T.* Eſq. during his life, and after his deceaſe to the uſe of his firſt and other ſons ſucceſſively in tail male, in default of ſuch iſſue, to the uſe of the heirs male of the teſtator's body, with remainder to his heirs, and gave to truſtees therein named, certain perſonal property to be laid out in the purchaſe of lands, to be ſettled to the ſame uſes as his other real eſtates were, and until ſuch purchaſe of lands the intereſt thereof to be paid to thoſe entitled to the rents in caſe ſuch purchaſe had been made. AND whereas the ſaid Sir *F. J.* the father, by codicil dated, &c. gave and deviſed, in default of iſſue male of his ſaid ſons *J.* and *T.* and for want of iſſue male of his own body, all his real eſtate unto the heirs of his the teſtator's body, and for want of ſuch iſſue, ſubject to legacies, he bequeathed them over, and directed that the lands directed to be purchaſed with his perſonal eſtate, ſo by his will given to truſtees, ſhould be ſettled to the uſes of his will, and likewiſe to that of his codicil, and that ſince the making his ſaid will he had purchaſed the manor of ——, the demeſne and other lands in ——, held of —— for three lives, he gave

MARRIAGE.

MARRIAGE. the ſame to truſtees, their heirs and aſſigns, upo truſt, to pay the rents, and obſerve the covenant and to renew and be ſeiſed of the ſaid leaſehold pre miſes, in truſt, for ſuch perſons as ſhould be poſſe ſed of his freehold, by virtue of his will, ſo far as th nature of the leaſehold premiſes would admit. An whereas the ſaid Sir *F. J.* by another codicil, direct ed that ——, part of the ſum of ——— ſo give by his will, to truſtees, in truſt, to pay the interes thereof to his ſaid ſon *T.* until his marriage, the in truſt, to purchaſe lands, to be ſettled to ſuch uſes and truſts and for ſuch intents and purpoſes and for the benefit of his ſaid ſon *T.* and ſuch wo man as he ſhould marry, and their iſſue, as his ſaid ſon *T.* ſhould before or after his marriage direct limit, or appoint. And whereas the ſaid Sir *F. J.* the father, died in, &c. leaving iſſue the ſaid *F.* the Sir *F. J.* bart. his eldeſt ſon, and *T.* his younger ſon and no other child. And whereas by a decree or decretal order of the High Court of Chancery, made, &c. in a cauſe then and ſtill depending, wherein, &c. it was declared that the ſaid laſt recited will and codicil ſhould be carried into exe cution, and that it ſhould be referred to the Maſter to take, *inter alia*, an account of the teſtator's perſonal eſtate not ſpecifically deviſed, and the reſidue thereof after payment of debts, &c. to be laid out in lands, according to the directions in the ſaid will and in the mean time to be laid out in real or parlia mentary funds, the intereſt to be paid to the perſons entitled to the rents and profits of the ſaid lands if purchaſed. And whereas all the teſtator's debts, &c. have been paid, except the ſum of ——, part of

he ſaid ſum of —— ſo given to truſtees for the pur- MARRIAGE.
poſes aforeſaid, and that the reſidue conſiſted of
—, and which by the ſaid decree, had been transferred
o Accountant-General, in truſt, &c. AND whereas
— Bank ſtock was ſet apart in lieu and ſatisfaction
f ſaid ——, transferred to Accountant-General, in
ruſt, &c. AND whereas the ſaid Sir *F. J.* the ſon,
ied without iſſue, leaving Sir *T. J.* his brother and
eir at law; and whereas Sir *T.* by indenture of, &c.
ade in conſideration of his marriage with *B. E.*
mited, directed, and appointed, the ſaid —— Bank
ock, to truſtees, their executors, adminiſtrators, and
ſſigns, for the term of — years upon truſts, that
ever did or can ariſe, and after the determination of
he ſaid term to the uſe of himſelf for life, after his
eceaſe to *E* his wife, for her life, after her deceaſe
o ſons ſucceſſively in tail male, and in default of
uch iſſue to his right heirs. And whereas the ſaid
E. died, leaving *F. E.* and the ſaid *(intended wife,)*
nd no other child: AND whereas the leaſe of the
manor of ——, had been renewed by *F. G.* for the
ives of *C. J. F. E.* and the ſaid *(intended wife)*:
AND whereas Sir *T.* being ſeiſed in fee ſimple of the
manor of, &c. of a moiety, houſes, and premiſes,
of ——, &c. of the yearly value of —— or there-
abouts, after legacies, &c. by will, gave the reſidue
of his real and perſonal eſtate to the ſaid *G. C. W. T.*
and *B. M.* and the ſurvivor of them, and heirs of
ſuch ſurvivor, upon truſt, within ſix months after his
deceaſe, by ſale, mortgage, transfer, or otherwiſe,
of all or any part of his eſtates real and perſonal,
to raiſe the ſum of ——, and to place the ſame out
at intereſt upon good ſecurity, in their names, and

MARRIAGE. as touching the ſaid —— and intereſt to ariſe there from, he gave the ſame to the ſaid truſtees, and to th ſurvivor of them, and his heirs, upon truſt, to pa unto *B. M.* the intereſt thereof, until his two daugh ters, *E.* and (*intended wife,*) attained the age of 2 years, or marriage, for their maintenance and educa tion, ſo as ſuch intereſt did not exceed —— per ann and after they ſhould have reſpectively attained th age of 21 years, or marriage, he directed the truſ tees to pay to each of his daughters, *E.* and (*intended wife,*) for their own uſe and benefit, for the term of — years, if they ſhould ſo long live, to be as a ſeparate and diſtinct proviſion for them and each of them, and to be in no ways ſubject to the control, debts, an engagements of their huſbands, in caſe either of hi ſaid daughters ſhould die, leaving no child, the in tereſt to be paid to the ſurvivor during the remain der of the ſaid term, if ſhe ſhould ſo long live, and if both died without iſſue, he directed his truſtees to pay —— part thereof to the ſaid *B. M.* if ſhe ſur vived his ſaid daughters, and the intereſt of the reſi due of the ſaid —— to her for the remainder of the ſaid term of — years, if ſhe ſo long lived, and ſubject to the payment of the ſeveral gifts, charges, incum brances, and contingences, by him thereby charged and limited on the ſaid ——, he gave the ſame, or what ſhould remain of the ſame, and as the ſame ſhould become clear and free of all or any part of the ſaid charges and incumbrances, unto the ſaid truſtees in truſt, to yield up the ſame after the deceaſe of his ſaid two daughters reſpec tively, in moieties or in the whole as the caſe ſhould be, to ſuch perſon or perſons as ſhould be entitled

ıder the uſes and limitations thereinafter mentioned, MARRIAGE.
the reſidue and remainder of his eſtates real and
rſonal upon the like uſes and limitations; and as
the reſidue and remainder of his eſtates real and
rſonal, he gave and deviſed the ſame unto the
id truſtees, and the ſurvivor of them, and his heirs
on truſt, that they or the ſurvivor of them, or the
irs of ſuch ſurvivor ſhould and might receive the
nts, intereſt, dividends, or other produce thereof
r the uſe of his ſaid two daughters *E.* and (*intended*
ife), until they ſhould attain the age of 21 years,
r day of marriage, which ſhould firſt happen, and
ien yield up and pay to his ſaid daughter *E.* one
ioiety of all ſuch rents, intereſts, dividends, and
roduce as ſhould have been received by ſaid
uſtees, and after his ſaid daughter *E.* attaining
ıe age of 21 years, or day of marriage, then to
ield up to his ſaid daughter *E.* a moiety of all his
iid real and perſonal eſtate not therein before or
fter deviſed, to hold to her and the heirs of her
ody; and for want of ſuch iſſue he deviſed the
ime to his ſaid daughter, (*intended wife*) the heirs
f her body, and for want of ſuch iſſue, to his own
eirs; and alſo to yield up and pay the other moiety
o his ſaid daughter, (*intended wife*) (ſame verbatim
s bequeſt to *E.*) but his will and meaning was,
hat in caſe both or either of his ſaid daughters ſhould
ave iſſue more than one child, it ſhould be lawful
or them reſpectively by any deed or writing to
lemiſe, mortgage, or charge ſuch parts of the
eſpective moieties as aforeſaid by his ſaid will
ntailed, as ſhould be a ſufficient ſecurity for raiſing
ſum not exceeding ——, for the portion or por-

MARRIAGE. tions of ſuch younger child or children, and a
pointed ſaid truſtees executors: and by codicil a
pointed ſaid *B. M.* and *G. C.* and the ſurvivor
them, guardians or guardian of his ſaid two daug
ters until they reſpectively attained the age of
years. AND whereas the ſaid ſir *T.* died leavi
the ſaid *E.* and *(intended wife,)* his daughters, a
no other child. AND whereas, by a decree or d
cretal order, made in the ſaid court of chancery t
— of July, in the year of our Lord ——, and in
cauſe then and ſtill depending in ſaid court, where
—, &c. were plaintiffs and — defendants: and
was declared that the will of the ſaid ſir *F.*
ought to be eſtabliſhed, and the truſt thereof to
performed and carried into execution, and decre
the ſame accordingly; and it was referred to
maſter to take an account of the perſonal eſtate
the ſaid ſir *T. F.* and of his debts, legacies, and fun
ral expences; and out of the clear ſurplus of h
perſonal eſtate, (if any,) the ſaid ſum of —— ſhou
be raiſed; and in caſe the ſame ſhould not be ſu
ficient for that purpoſe, it was declared that, t
aſſigned —, bank ſtock, or ſo much thereof as wou
make good the ſaid deficiency ſhould be ſold, and th
in caſe ſuch bank ſtock ſhould be inſufficient, to b
raiſed by ſale of his real eſtate; and when the ſa
—— be ſo raiſed by ſale of his real eſtate, the ſa
to be placed out at intereſt on government or re
ſecurities, in the names of the ſaid executors und
the truſts in the ſaid will, with direction for maint
nance, &c. in the mean time. AND whereas t
ſaid *B. M.* is lately dead, and ——, bank ſtock, —
&c. and —— remains in the bank in the name

MARRIAGE.

Recital of propoſals of marriage.

Recital of the maſter's report approving of the propoſals.

e accomptant-general, to the credit of the cauſe, id ——, part of the ſaid bank annuities belongs to , and alſo to *(intended wife)*: AND whereas the id *(intended huſband)* having made overtures of arriage to the ſaid *(intended wife)*, and the ſame ving been approved by her and her friends, and e ſaid *G. C.* her only ſurviving teſtamentary guar- ian: It was by an order made, &c. ordered, that e ſaid *(intended huſband)* ſhould be at liberty to y propoſals before the ſaid maſter *B.* for making a oper ſettlement upon the ſaid *(intended wife)*, and e iſſue of the ſaid intended marriage, and that the id maſter ſhould enquire and certify whether ch propoſals were reaſonable, proper, and fit to e carried into execution; and after the ſaid maſter hould have made his report, ſuch further order hould be made as ſhould be juſt. AND whereas the id maſter in purſuance of the ſaid order, made his eport in the ſaid cauſe, bearing date, &c. and there- y certified that he had been attended by the ſoli- itors for the plaintiffs and the defendants in the ſaid auſe, and for the ſaid *(intended husband)*, and that it d been mutually agreed, &c. AND whereas by nother order, bearing date, &c. the ſaid laſt recited laſter's report was confirmed, and the propoſals of id *(intended husband)* ordered to be carried into xecution by a proper ſettlement, to be approved by he ſaid maſter, and all proper parties to join therein: nd it was further ordered that *(intended husband)* hould be at liberty to intermarry with ſaid *(intended wife)*, and that upon ſuch marriage being had, *(intended husband)* ſhould be at liberty to apply to the ourt for ſaid — ſtock, &c. and — caſh. AND where-

MARRIAGE. as by indenture of bargain and ſale bearing even dat with theſe preſents, and made or expected to be mad between the ſaid (*intended huſband,*) of the firſt part the ſaid (*intended wife*) of the ſecond part, and the ſai *G. C.* and *W. T.* of the third part, and intended to b enrolled in his Majeſty's court of King's Bench, b the ſaid (*intended husband*) in purſuance and perform ance of the ſaid propoſal, with the privity and appro bation as well ſaid (*intended wife*) as of the ſai maſter, did grant, bargain, and ſell unto the ſaid *G. C* and *W. T.* and their heirs, all &c. upon truſt to ſel and pay off mortgages on different eſtates, &c. Now THIS INDENTURE WITNESSETH, that in purſuance and performance of the aforeſaid propoſal, relating to the eſtate of the ſaid (*intended husband*) hereinbefore men- tioned to be of the yearly value of — and upwards, ſubject as aforeſaid, and in conſideration of the ſaid in- tended marriage, and of the ſaid £—— bank 3 per cent. conſolidated anns. and £—— in caſh, the ſaid (*intended wife's*) ſhare of the ſaid £— and £— pro- poſed to be transferred to the ſaid (*intended husband*) and for ſecuring the annual ſum of £— and yearly rent of —to the ſaid (*intended wife*) during her life, in caſe the ſaid intended marriage take effect, and ſhe happen to ſurvive the ſaid (*intended husband,*) for, or in nature of her jointure, and in bar of dower and free bench, and for making ſome proviſion for the children of the ſaid marriage, if any, and in conſideration of — of lawful &c. to the ſaid (*intended husband*) paid by the ſaid *G. C.* and *W. T.* immediately before the ſealing and delivering of theſe preſents, the receipts whereof is hereby acknowledged, he the ſaid (*intended husband*) with the privity and approbation as well of the ſaid

Witneſs, that intended huſband conveys lands &c. to truſtees upon truſts aftermentioned.

(*intended wife*) as of the ſaid *G. C.* the guardian teſtified by their ſeverally being parties to, and ſealing and delivering, theſe preſents, hath granted, bargained, ſold, releaſed and confirmed, and by theſe preſents doth, &c. unto the ſaid *G. C.* and *W. T.* in their actual poſſeſſion, now being by virtue of a bargain and ſale thereof, to them made by the ſaid (*intended husband*) in conſideration of 5*s.* by indenture bearing date the day next before the day of the date of theſe preſents, for the term of one year, commencing from the date next before the day of the date of the ſame indenture of bargain and ſale,) and their heirs, ALL that the manor of &c. &c. To have and to hold all and every the ſaid manors, meſſuages, cottages, farm, lands, hereditaments, and other the premiſes hereinbefore granted, and releaſed, or mentioned, or intended ſo to be, with their appurtenances unto the ſaid *G. C.* and *W. T.* and their heirs, to, upon, and for the uſes, truſts, intents, and purpoſes, and with and ſubject to the powers, proviſos, declarations and agreements, herein after declared, of and concerning the ſame. AND this indenture alſo witneſſeth, (conveyance by (*intended husband,*) to ſame truſtees of other lands, &c.) And it is hereby expreſſed, declared and agreed, by and between the ſaid parties hereto, that theſe preſents, and the grants, and releaſes thereby made, ſhall be, and enure, and that the ſaid *G. C.* and *W. T.* and their heirs, ſhall by force and virtue thereof, ſtand, and be ſeiſed of all the ſaid manors, meſſuages, cottages, farms, lands, rents, hereditaments, and premiſes, firſt hereby granted, and releaſed, or mention-

MARRIAGE.

Like conveyance of other lands.

MARRIAGE.

ed, or intended ſo to be, with their appurtenances, and alſo of the ſaid caſtle, &c. and premiſes, laſt hereby granted, and releaſed, or mentioned, or intended ſo to be, with their reſpective appurtenants, to, upon, and for the uſes, truſts, intents, and purpoſes, and with, and ſubject to the powers, proviſos, declarations and agreements, herein after limited, declared, and expreſſed, of or concerning the ſame, (that is to ſay,) to the uſe of the ſaid *(intended husband,)* and his heirs, until the ſaid intended marriage between him and the ſaid *(intended wife)* ſhall be had and ſolemnized, and from, and immediately after the ſolemnization thereof, then to the uſe of the ſaid *(intended husband,)* and his aſſigns, during his life, without impeachment of, or for any manner of waſte, and from and after the determination of that eſtate, by forfeiture or otherwiſe, in his life time, to the uſe of the ſaid *G. C.* and *W. T.* and their heirs, during the life of the ſaid *(intended husband)* in truſt, to preſerve the contingent uſe, and eſtate, hereinafter limited from being defeated, or deſtroyed, and for that purpoſe to make entries, and bring actions as occaſion ſhall be, or require; but nevertheleſs to permit and ſuffer the ſaid *(intended husband)* and his aſſigns, to receive and take the rents, iſſues, and profits of the ſaid caſtle, borough, ſcite, manors, &c. to and for his and their own uſe and benefit, during his life, and from and after the deceaſe of the ſaid *(intended husband,)* then as to, for, and concerning the ſaid manors, &c. firſt hereby granted, and releaſed, or mentioned, or intended ſo to be, with their appurtenances, to the uſe, intent, and purpoſes that the ſaid *(intended wife)* and her aſſigns, if ſhe ſhall ſur-

Declaration that all the aforeſaid premiſes are conveyed to the ſaid truſtees, to the uſe of the intended huſband, till the marriage, then to him for life, then to the truſtees, to preſerve, &c.

After the deceaſe of intended huſband.

As to the firſt granted premiſes, to uſe, of intended wife, for her jointure.

vive the ſaid *(intended husband)* may, and ſhall, from and immediately after his deceaſe, out of the ſaid manors, meſſuages, cottages, farms, lands, tenements, hereditaments, and premiſes, have, receive, and take, for and during her life, an annual ſum or yearly rent of — of lawful, &c. for, or in nature of her jointure, and in bar, or lieu, and in ſatisfaction of all dower and free-bench right, and title of dower, and free-bench, which ſhe the ſaid *(intended wife,)* may, or can by the common law, or the cuſtom of any manor, have claim, or be, or become entitled to, of, or in any meſſuages, lands, tenements and, hereditaments, either freehold or copyhold, whereof the ſaid *(intended husband)* now is, or ſhall, during the joint lives of him, and the ſaid *(intended wife,)* be ſeiſed, or entitled to any eſtate of inheritance, or for any eſtate to which any dower or free-bench is incident, the ſaid annual ſum or yearly rent of — to be yearly iſſuing and payable out of the ſaid manors, &c. by four equal quarterly payments, on or at the days and times hereinafter mentioned, (that is to ſay) the — day of —, the — day of —, the — day of —, and — day of —, in every year, without any deduction or abatement whatſoever, out of the ſame, or any part thereof, for, or by reaſon of any parliamentary or other taxes, rates or impoſitions whatſoever, taxed, charged, aſſeſſed, or impoſed, or to be taxed charged, aſſeſſed, or impoſed upon the ſaid annual ſum or yearly rent of —, or any part therof, or upon the ſaid manor, &c. out of which the ſaid annual ſum or yearly rent is to be iſſuing and payable as aforeſaid or upon the ſaid (*intended wife*) or her aſſigns, in reſpect thereof, or, for, or on account, or in reſpect of MARRIAGE.

MARRIAGE. any other matter, cauſe, or thing whatſoever, the firſt quarterly payment of the ſaid annual ſum or yearly rent of — to be made on, or at ſuch of the ſaid days or times as ſhall happen next after the deceaſe of the ſaid (*intended huſband*). AND to the further uſe, intent, and purpoſes, that when and ſo often as the ſaid annual ſum or yearly rent of —, or any part thereof, ſhall be unpaid, and in arrear, for the ſpace of 21 days, next after any of the ſaid days or times whereon the ſame ought to be paid as aforeſaid, then, and from time to time as often as it ſhall ſo happen, it may and ſhall be lawful to and for the ſaid (*intended wife*) and her aſſigns, into and upon the ſaid manor, &c. out of which the ſaid annual ſum or yearly rent of —, is to be iſſuing and payable as aforeſaid, or any of them, or any part thereof, to to enter and diſtrain, and the diſtreſs and diſtreſſes then and there found, to take, lead, drive, carry away, and impound, and detain, and keep, until the ſaid annual ſum or yearly rent of ——, or ſo much of the ſame as ſhall be unpaid and in arrear, as aforeſaid, and all coſts, charges, and expences attending the taking ſuch diſtreſs or diſtreſſes ſhall be fully ſatisfied, and paid, and in default thereof in due time after ſuch diſtreſs or diſtreſſes ſhall be ſo taken, to appraiſe and ſell and diſpoſe of the ſame diſtreſs and diſtreſſes, or otherwiſe to demean therein, according to law in like manner as in diſtreſſes taken for rent, reſerved by leaſe or common demiſe, to the end and intent that ſhe the ſaid (*intended wife,*) and her aſſigns, may be fully ſatisfied and paid the ſaid annual ſum or yearly rent of —, or ſo much thereof as ſhall be ſo unpaid and in arrear.

Powers for recovering the ſame.

as aforeſaid, and all coſts, charges, damages, and expences ſuſtained by reaſon of the non-payment thereof, contrary to the true intent and meaning of theſe preſents, and to this further uſe, intent, and purpoſe, that if the ſaid annual ſum or yearly rent of ——, or any part thereof, ſhall be unpaid and in arrear for the ſpace of 40 days next after any of the ſaid days or times whereon the ſame ought to be paid as aforeſaid, then and in ſuch caſe it ſhall and may (although no demand ſhall have been made thereof,) be lawful to and for the ſaid (*intended wife*) and her aſſigns, into and upon the ſaid manor, &c. out of which the ſaid annual ſum or yearly rent of —— is to be iſſuing and payable as aforeſaid, or into and upon any of them or any part thereof, in the name of the whole, to enter, and receive and take the rents, iſſues, and profits thereof, and of every part thereof, to and for her or their own uſe and benefit, until thereby, or therewith, or otherwiſe, ſhe the ſaid (*intended wife*) or her aſſigns, ſhall be fully ſatisfied and paid the ſaid annual ſum or yearly rent of ——, ſo unpaid as aforeſaid, and all arrears thereof due at the time of ſuch entry, and which ſhall afterwards be incurred or grown due during her or their being in poſſeſſion, and all coſts, charges, damages, and expences, which ſhe, they, or any of them ſhall be put unto, or in any wiſe ſuſtain, by reaſon of the non-payment of the ſaid annual ſum or yearly rent, contrary to the true intent and meaning of theſe preſents, and that ſuch poſſeſſion when taken ſhall be without impeachment of waſte. AND as to, for, and concerning the ſaid manor, &c. firſt hereby granted and releaſed or mentioned, or intented ſo to be, with their appur-

MARRIAGE.

Term of —— years created in the firſt granted premiſes, for

MARRIAGE.

purpoſes after-mentioned.

tenances, from and immediately after the deceaſe of the ſaid *(intended husband,)* charged and chargeable with the ſaid annual ſum or yearly rent of —, and the remedies herein before given for obtaining payment thereof, the ſame ſhall be to the uſe of the aforeſaid *P.* earl of —, and *B. R.* their executors, adminiſtrators, and aſſigns, for and during the term of — years, to commence and be computed from the death of the ſaid *(intended husband,)* and from henceforth next enſuing fully to be completed and ended, without impeachment of, or for any manner of waſte, upon and for the truſts, intents and purpoſes, and under and ſubject to the proviſos, declarations, and agreements hereinafter declared and expreſſed, of, or concerning the ſame term. AND as to, for, and concerning all the ſaid manors, &c. firſt hereby granted, and releaſed, or mentioned or intended ſo to be, with their appurtenances, from and immediately after the end, expiration, or other ſooner determination of the ſaid term of —— years, and in the mean time ſubject thereto, and to the truſts thereof, and alſo as, to, for, and concerning all the ſaid caſtle, borough, &c. laſt hereby granted, declared, or mentioned, or intended ſo to be, with their reſpective appurtenances, from and immediately after the deceaſe of the ſaid *(intended husband)* to the uſe of the aforeſaid, *T. C. S.* and *T. A.* their executors, adminiſtrators, and aſſigns, for and during the term of — years, to be computed from the death of the ſaid *(intended husband)* and from thenceforth next enſuing, fully to be completed and ended, without impeachment of, or for any manner of waſte, upon, or for the truſts, intents and purpoſes, and with and ſubject to the powers, proviſos, declarations and

As to ſame premiſes, and alſo ſaid *laſt* granted premiſes after the end of the term.

To truſtees for — years, to commence on the deceaſe of the intended huſband, for purpoſes after-mentioned.

agreements, hereinafter declared and expreſſed, of, or concerning the ſame term, and from and immediately after the end and expiration or other ſooner determination of the ſaid term of — years, and in the mean time ſubject thereto, and to the truſt thereof, to the uſe of the firſt ſon of the ſaid (*intended huſband,*) on the body of the ſaid (*intended wife,*) to be begotten, and the heirs male of the body of ſuch firſt ſon iſſuing, and for default of ſuch iſſue, to the uſe of the 2d, 3d, 4th, 5th, and all and every other ſon or ſons of the ſaid (*intended husband,*) on the body of the ſaid (*intended wife,*) to be begotten, whether born in his life time, or after his deceaſe, ſeverally, ſucceſſively, and in remainder, one after another, as they and every of them ſhall be in priority of birth, and the heirs male of the body and bodies of all and every ſuch ſon and ſons iſſuing, the elder of ſuch ſons, and the heirs male of his body iſſuing, being always preferred, and to take before the younger of the ſame ſon, or ſons, and the heirs male of his and their body and bodies iſſuing, and in default of ſuch iſſue, to the uſe of the ſaid (*intended husband*) his heirs and aſſigns, for ever. And it is hereby declared and agreed, that the ſaid term of — years, is ſo limited in uſe to the ſaid *P.* earl of —, and *B. R.* their executors, adminiſtrators, and aſſigns, upon and for the truſts, intents, and purpoſes, and under and ſubject to the proviſo hereinafter mentioned, of, and concerning the ſame term (that is to ſay,) in truſt for the further and better ſecuring the ſaid (*intended wife*) and her aſſigns, the due payment of the ſaid annual ſum or yearly rent of — on or at the days and times hereinbefore mentioned, or appointed for pay-

MARRIAGE.

Remainder to firſt and other ſons of the marriage.

Truſts for — years, term declared to be for ſecuring the lady's jointure, and then to ceaſe.

MARRIAGE ment thereof, without any deduction or abatement as aforeſaid, and for that purpoſe, in caſe the ſaid annual ſum or yearly rent of —, or any part thereof, ſhall at any time be unpaid, and in arrear, for the ſpace of 60 days, next after any of the ſaid days or times whereon the ſame is made payable as aforeſaid, that then and ſo often as it ſhall ſo happen, they the ſaid *P.* earl of ——, and *B. R.* and the ſurvivor of them, and the executors, adminiſtrators and aſſigns of ſuch ſurvivor, do and ſhall from time to time, by and out of the rents, iſſues and profits, of the ſaid hereditaments and premiſes compriſed in the ſaid term of —— years, or by mortgage or ſale of the ſame hereditaments and premiſes, or any part thereof, for all or any part of the ſame term, or by bringing actions againſt all or any the tenants or occupiers of the ſaid hereditaments and premiſes, for the recovery of rents then in arrear, or by making entries upon the ſame hereditaments and premiſes, or any of them, or by all or any of the ſaid ways or means whatſoever, levy, raiſe, and pay to the ſaid (*intended wife*,) her executors, adminiſtrators, or aſſigns, ſuch ſum or ſums of money as ſhall be ſufficient to anſwer and ſatisfy all arrears of the ſaid annual ſum or yearly rent of ——, and all coſts, charges, and expences, which ſhe the ſaid (*intended wife*), or her aſſigns, or the ſaid *P.* earl of ——, and *B. R.* their executors, adminiſtrators, and aſſigns, ſhall pay, ſuſtain, or be put unto, by reaſon of the non-payment, or the recovering or obtaining payment of the ſaid annual ſum or yearly rent of ——, or any part thereof, or in any wiſe relating thereto, and pay the reſidue or overplus

if any,) of the monies which ſhall be ſo levied and MARRIAGE
iſed, and remain, after anſwering the purpoſes
foreſaid, to the perſon or perſons who for the time
eing ſhall be entitled to the ſaid hereditaments and
remiſes, in remainder or reverſion, immediately
xpectant on the determination of the ſaid term of
— years, and from and after payment and ſatiſ-
ction of all arrears of the ſaid annual ſum or yearly
ent of —, and all ſuch coſts, charges, damages, and
xpences, as aforeſaid, then upon further truſt, that
he ſaid *P.* earl of —, and *B. R.* and the ſurvivor of
hem, and executors, adminiſtrators, and aſſigns, of
uch ſurvivor, ſhall and do permit and ſuffer the
erſon or perſon, who, for the time being, ſhall be ſo
ntitled, in remainder or reverſion, as aforeſaid, to
eceive and take all the reſidue or overplus of the
ents, iſſues, and profits, of the ſaid hereditaments
nd premiſes, or ſo much thereof as ſhall remain un-
old or undiſpoſed of, for the purpoſes aforeſaid, to
nd for his and their own proper uſe and benefit.
PROVIDED always, and it is hereby declared and
greed, that all the rents, iſſues, and profits, of the
aid hereditaments and premiſes, may and ſhall, in the
nean time, and until the ſaid annual ſum or yearly
ent of —, or ſome part thereof, ſhall be unpaid and
n arrear, after any of the days or times hereinbefore
nentioned, or appointed for payment thereof, be
eceived and taken by the perſon or perſons who for
he time being ſhall be ſo entitled, in remainder or
everſion as aforeſaid, to and for his and their own
ſe and benefit, and that after the deceaſe of the
aid (*intended wife,*) and full payment made to her,
er executors, adminiſtrators, or aſſigns, of the ſaid

MARRIAGE.

annual ſum or yearly rent of ——, (in caſe the ſa
ſhall become payable,) and all arrears thereof,
any,) and of all coſts, charges, damages, and e
pences, (if any,) relating thereto, the ſaid term
— years, of and in all ſuch of the ſaid hereditamen
and premiſes comprized therein, as ſhall not ha
been mortgaged, or ſold, or diſpoſed of, for the pu
poſes aforeſaid, ſhall ceaſe, determine, and be utte
void, to all intents and purpoſes whatſoever, a
thing hereinbefore contained to the contrary there
in any wiſe notwithſtanding. And as to, for, a
concerning the ſaid term of —— years, hereinbe
limited in uſe to the ſaid *T. C. S.* and *T. A.* th
executors, adminiſtrators, and aſſigns, it is here
declared that the ſame term is ſo limited to the
upon and for the truſts, and for the intents and pu
poſes, and under and ſubject to the powers, pr
viſos, declarations, and agreements, hereinafter d
clared and expreſſed, of and concerning the ſa
term of — years, that is to ſay, if there ſhall be a
child or children of the ſaid (*intended huſband,*)
the body of the ſaid (*intended wife,*) begotten,
being an eldeſt or only ſon, then, and in ſuch c
they the ſaid *T. C. S.* and *T. A.* their executo
adminiſtrators, and aſſigns, ſhall and do, by and o
of the rents, iſſues, and profits, of the ſaid caſtle, &
hereby reſpectively granted and releaſed, or mentio
ed, or intended ſo to be, or by mortgage, or ſ
of the ſaid hereditaments and premiſes, or any
them, or any part thereof, for all or any part
the ſaid term of —— years, or by all or any of
ways or means aforeſaid, or by any other ways
means as they the ſaid truſtees, or the ſurvivor
them, his executors, adminiſtrators, or aſſigns, ſh

Truſt of — years. Term declared to be for raiſing portions for younger children in the uſual manner.

ink fit, either in the life time of the ſaid *(intended* MARRIAGE.
ſband) if he ſhall by any writing, or writings
gned with his hand, ſo order or direct, or otherwiſe,
ter his deceaſe, but ſubject nevertheleſs, and with-
it prejudice to the ſaid annual ſum or yearly rent of
, or the remedies for ſecuring the ſame, or the ſaid
rm of — years, or the truſts thereof, levy and raiſe
ch ſum of money for the portion or portions of all
d every ſuch child and children, not being an eldeſt
only ſon, as is hereinafter mentioned, that is to ſay,
there ſhall be but one ſuch child, not being an
deſt or only ſon, then the ſum of — of lawful, &c.
r the portion of ſuch one child, be the ſame a ſon
r daughter, and to be payable and paid at ſuch day
r time as the ſaid *(intended huſband)* ſhall, by any
ed or writing, to be ſealed and delivered by him
the preſence of, and atteſted by two or more
redible witneſſes, with or without power of revo-
ation, or by his laſt will and teſtament, in writing,
o be ſigned by him in the preſence of, and atteſted
y three or more credible witneſſes, direct or ap-
oint, and in default of ſuch direction or appoint-
ent then to be paid to ſuch child, being a ſon, at
is age of 21 years, or the ſame, or any part thereof,
o be ſooner advanced and applied for his prefer-
ent or advancement in the world, if the ſaid
truſtees, or the ſurvivor of them, his executors, ad-
miniſtrators, or aſſigns, ſhall ſo think fit, and to
ſuch child, being a daughter, at ſuch age of 21 years,
r day of marriage, which ſhall firſt happen; but
f ſuch ſon ſhall attain the age of 21 years, or ſuch
daughter ſhall attain the ſaid age, or be married in
he life time of the ſaid *(intended husband,)* then the

MARRIAGE. ſaid portion, or ſo much thereof as ſhall not ha
been raiſed and applied for the preferment or a
vancement of ſuch ſon as aforeſaid, to be paid with
three calendar months next after the deceaſe of the ſa
(*intended huſband,*) with intereſt for the ſame from h
death, at the rate of £4 for every £100 for a year, and
there ſhall be only two ſuch children, not being eith
of them an eldeſt or only ſon, then the ſum of —
of ſuch lawful money as aforeſaid, for the portio
of ſuch two children; and if there ſhall be three
more ſuch children, not being any of them an eld
or only ſon, then the ſum of ——, of like lawf
money, for the portions of ſuch three or mo
children, and the ſaid ſum of ——, or ——, as t
caſe ſhall happen, for the portions of all the ſa
children, to go and be paid to ſuch children, n
being an eldeſt or only ſon, at ſuch time or time
and in ſuch parts or ſhares, and manner, a
with and ſubject to ſuch proviſos, conditions, a
limitations over, (ſuch limitations over being for t
benefit of ſome or one of them,) as the ſaid (*intend*
huſband,) by any deed or deeds, with or witho
power of revocation, to be by him ſealed a
delivered in the preſence of, and atteſted by two
more credible witneſſes, or by his laſt will or teſt
ment, in writing, to be ſigned by him in the preſen
of, and atteſted by three or more credible witneſſe
ſhall direct or appoint, and for want of any ſuc
directions or appointment, then the ſum of — or —
for the portions of the ſaid two, three, or mo
children, not being any of them an elder or on
ſon, to be equally divided between or amongſt the
ſhare and ſhare like, at the time following, that

ſay, the portion or portions of ſuch of them as MARRIAGE.
all be a younger ſon or ſons, to be paid to him or
em at his or their age or ages of 21 years reſpect-
ely, or the ſame, or any part thereof, to be ſooner
iſed and applied for his or their preferment or
vancement in the world, as the ſaid truſtees, or
e ſurvivor of them, his executors, adminiſtrators,
r aſſigns, ſhall think fit, the ſaid (*intended huſband*)
eing dead, and the portion or portions of ſuch of
em as ſhall be a daughter or daughters, to be paid
her or them, at her or their age of 21 years, or
y or days of marriage, which ſhall reſpectively firſt
ppen after the deceaſe of the ſaid (*intended huſband,*)
t if any of ſuch child or children for whom the
id portion or portions is or are hereby intended,
eing a ſon or ſons, ſhall attain his or their age or
es of 21 years, and being a daughter or daughters,
all attain her or their age or ages of 21 years, or be
arried in the life time of the ſaid (*intended husband,*)
en the portion or portions of ſuch child or children,
eing a ſon or ſons, ſo attaining the ſaid age, or ſo
uch thereof as ſhall not have been ſooner raiſed
id applied as aforeſaid, and being a daughter or
aughters ſo attaining ſuch age, or marriage as afore-
id, ſhall be raiſed and paid within three calendar
onths next after the deceaſe of the ſaid (*intended*
sband,) with intereſt for the ſame from his death, at
e aforeſaid rate of £4 for every £100 for a year. PRO-
IDED, that notwithſtanding poſtponing the pay-
ent of ſuch portion or portions until after the
ceaſe of the ſaid (*intended husband,*) the ſaid por-
on or portions ſhall, nevertheleſs, be, and be deemed,
id conſidered as a veſted intereſt, or veſted intereſts,

MARRIAGE. in ſuch of the ſaid children, who, being a ſon
ſons, ſhall attain the age of 21 years, and being
daughter or daughters, ſhall attain that age, or
married in the life time of the ſaid (*intended husband*

Survivorſhip between children. PROVIDED always, that if any one or more of ſu
children, being a ſon or ſons, ſhall die, or beco
an eldeſt or only ſon, and entitled, in poſſeſſion,
any of the ſaid manors, meſſuages, cottages, farm
lands, tenements, rectories, hereditaments, and pr
miſes, hereby reſpectively granted and releaſed,
mentioned or intended ſo to be, or to receive an
take the rents and profits thereof, before he or the
ſhall attain the age of 21 years reſpectively, and bein
a daughter or daughters, ſhall die before ſhe or the
ſhall attain the ſaid age reſpectively, without havin
been married, then the ſhare or ſhares of ſuch chil
or children, of and in the ſaid ſum of —, or —,
dying or becoming an eldeſt or only ſon, and en
titled as aforeſaid, or ſo much thereof as ſhall no
have been raiſed and applied for the preferment o
advancement of the ſaid child or children, as herein
before is mentioned, ſhall go, accrue, and belong,
the ſurvivors and ſurvivor, or others and other
ſuch children, not being any of them an eldeſt
only ſon, and ſo entitled as aforeſaid, and be equall
divided between or amongſt them, if more than on
ſhare and ſhare alike, and the ſame to veſt in and b
payable at ſuch time or times, to ſuch ſurviving or oth
child or children as his, her, or their original ſha
or ſhares, of and in the ſaid ſums of — or —, ſha
become, and be veſted and payable, and that if an
other of the ſaid children for whom ſuch ſhare
ſhares is or are ſo hereinbefore intended as aforeſa

MARRIAGE.

and in the ſaid ſum of — or —, being a ſon or ſons, all die or become an eldeſt or only ſon, and entitled aforeſaid, before he or they ſhall attain the age of years, reſpectively, and being a daughter or daughrs ſhall die before ſhe or they ſhall attain the ſaid ge reſpectively, without having been married, then he ſhare or ſhares of him or them ſo dying as aforeid, of and in ſuch ſhare and ſhares ſo directed to urvive as aforeſaid, ſhall again from time to time, o, ſurvive, and accrue, together with his or their riginal ſhare or ſhares of and in the ſaid ſum of —, or ——, to the then ſurvivors or ſurvivor, or thers and other of the ſaid children, and ſhall reſt n and be payable at ſuch time or times as his, her, r their original ſhare or ſhares of the ſaid ſum of —, or ——, ſhall by virtue of theſe preſents, become veſted and payable, but nevertheleſs ſo that none of the ſaid children, ſhall, by virtue of or under the aforeſaid truſts of the ſaid term, have or be entitled by ſurvivorſhip or otherwiſe, to more than the ſum of —— for his or her portion. And upon further truſt, that they the ſaid *T. C. S.* and *T. A.* and the ſurvivor of them, and the executors, adminiſtrators, and aſſigns, of ſuch ſurvivor, do and ſhall after the deceaſe of the ſaid (*intended huſband*,) but ſubject and without prejudice as aforeſaid, by, with, or out of the rents, iſſues, and profits, of the ſaid caſtle, borough, ſcites, manors, &c. compriſed in the ſaid term of —— years, or any of them, levy and raiſe ſuch annual ſum or ſums of money, for the maintenance and education of the ſaid child or children, for whom the ſaid ſum of —, —, or —, is hereby intended, until the ſame, his, her, or their

Maintenance &c. for children till of age.

MARRIAGE. ſhare or ſhares thereof, ſhall become payable reſpectively, as the ſaid (*intended huſband,*) ſhall, by any deed or deeds, to be ſealed, delivered, and atteſted as aforeſaid, or by his laſt will and teſtament in writing, to be ſo ſigned and atteſted as herein before is mentioned, direct or appoint; and in default of ſuch direction or appointment, then as they the ſaid *T. C. S.* and *T. A.* or the ſurvivor of them, or the executors, adminiſtrators or aſſigns of ſuch ſurvivor, ſhall in their or his diſcretion think fit, not exceeding the intereſt of the ſhare or ſhares of ſuch child or children, of and in the ſaid ſum of —, —, or —, at the rate of £3 for every £100 for a year, the ſaid annual ſum or ſums for maintenance, to be free and clear of and from all taxes, rates, aſſeſſments, deductions, and abatements whatſoever, and to be paid quarterly, at or on the days or times of payment, herein before mentioned in every year, the firſt quarterly payment thereof to be made on ſuch of the ſaid days or times as ſhall happen next after the death of the ſaid (*intended huſband*). PROVIDED always, that no ſuch mortgage or ſale as aforeſaid, of the ſaid caſtle, &c. compriſed in the ſaid term of — years, or any of them, ſhall be made before the ſaid ſums of —, —, or —, or ſome part or parts thereof, ſhall become payable as herein before is mentioned, and that the rents, iſſues, and profits of the ſaid hereditaments and premiſes, over and above ſuch maintenance as aforeſaid, may and ſhall in the mean time, until ſuch mortgage or ſale of the ſaid hereditaments and premiſes, or ſome part thereof, be received and taken, (ſubject and without prejudice as aforeſaid,) by the perſon or perſons, who for the time being

Childrens portions not to be raiſed till payable.

shall be entitled to the same hereditaments and premises immediately expectant on the determination of the said term of —— years, to and for his and their own use and benefit, and that if the said *(intended husband,)* in his life-time, shall, with or out of his own money, give or advance to or for any of the said child or children, for whom a portion or portions is or are hereby so intended to be provided as aforesaid, any sum or sums of money for or towards his, her, or their portion or portions, which shall be equal or more than the said portion or portions hereby intended for such child or children, then such advanced portion or portions shall be in full of the portion or portions so hereby intended for him, her, or them respectively as aforesaid, but if such advanced portion or portions shall be less than the portion or portions so hereby provided, or intended for him, her, or them respectively, as aforesaid, then and in such case, such child or children, to whom such portion or portions, sum or sums of money, shall be so given or advanced, shall, after the decease of the said *(intended husband,)* have and receive only so much and such further portion or portions, by virtue of and under the trusts herein before declared or expressed of or concerning the said term of —— years, as together with the said portion or portions, sum or sums of money, so given or advanced by the said *(intended husband,)* in his life-time, will complete and make up the portion or portions herein before provided or intended for such child or children respectively, and no more, unless the said *(intended husband,)* shall signify or declare the contrary by some deed or writing, sealed

MARRIAGE.

Sums advanced to be in part of portions.

MARRIAGE.

and delivered by him, in the preſence of, and atteſted by, two or more credible witneſſes, or by his laſt will and teſtament in writing, ſigned by him in the preſence of the like number of witneſſes: Provided alſo, and it is hereby declared and agreed, that if there ſhall be three or more children of the ſaid (*intended huſband,*) on the body of the ſaid (*intended wife,*) to be begotten, not being either of them an eldeſt or an only ſon, it ſhall and may be lawful to and for the ſaid (*intended husband,*) by any deed or deeds, writing or writings, to be ſealed and delivered by him in the preſence of and, atteſted by two or more credible witneſſes, or by his laſt will and teſtament in writing, to be ſigned, publiſhed, and declared by him in the preſence of, and atteſted by, three or more credible witneſſes, to charge all or any part of the caſtles, &c. and premiſes laſt hereby granted and releaſed, or mentioned, or intended ſo to be, with any ſum or ſums of money, not exceeding in the whole the ſum of ——, as additional or further portions for ſuch children, to be raiſed and paid to them reſpectively, by the truſtee or truſtees for the time being, of the ſaid term of —— years, by all or any of the ways or means hereinbefore mentioned, at ſuch time or times, and with and ſubject to ſuch proviſos, powers, directions, and limitations, over for the benefit of ſome one or more of the ſaid children, as the ſaid (*intended husband,*) ſhall think fit: Provided alſo, and it is hereby declared and agreed, that when all and every the truſts of the ſaid term of —— years, ſhall be in all things fully performed and ſatisfied, or ſhall become unneceſſary or incapable of taking effect, then (the coſts and

Power for father to charge premiſes with additional portions.

Term to ceaſe when truſts performed.

charges of the execution of the truſts of the ſame term, (if any) being raiſed and paid) the ſaid term of —— years, of and in all ſuch of the ſaid caſtles, &c. and premiſes therein compriſed, as ſhall not have been mortgaged, ſold, or diſpoſed of, for the purpoſe aforeſaid, ſhall from thenceforth ceaſe, determine, and be void, to all intents and purpoſes whatſoever; any thing herein before contained to the contrary thereof notwithſtanding: Provided always, and it is declared and agreed that it may and ſhall be lawful, to and for the ſaid (*intended husband,*) from time to time during his life, and after his deceaſe to and for the ſaid *G. C.* and *W. T.* and the ſurvivor of them, and his heirs from time to time, during the minority of ſuch iſſue male of the ſaid (*intended husband,*) by the ſaid (*intended wife,*) as for the time being ſhall be entitled to the freehold of the ſaid caſtle, &c. hereby reſpectively granted and releaſed, or mentioned or intended ſo to be, or to receive and take the rents and profits thereof, by indenture or indentures; to be ſealed and delivered by him or them, in the preſence of, and atteſted by, two or more credible witneſſes, but ſubject and without prejudice to the aforeſaid annual ſum or yearly rent of ——, and the remedies for the ſame, to demiſe, leaſe, or grant, ſuch of the ſaid meſſuages, cottages, farms, lands, hereditaments, and premiſes, as are now leaſed for any term or number of years, determinable on the death or deaths of one, two, or three perſon or perſons, to any perſon or perſons in poſſeſſion or reverſion, and to demiſe, leaſe, or grant any of the ſaid caſtle, &c. to any perſon or perſons, for any term or terms of years abſolutely not exceeding 21 years, to take effect

MARRIAGE.

Power of leaſing for lives or years.

MARRIAGE. in poſſeſſion and not in reverſion, or by way of future intereſt, ſo as every ſuch demiſe, leaſe, or grant, to be made as aforeſaid, for any term or number of years, determinable on the death or deaths of one, two, or three perſon or perſons, and every demiſe, leaſe, or grant to be made in reverſion, together with all leaſes and demiſes therein, being of the ſame premiſes to be determinable on the deaths of three perſons at the moſt, and ſo as by every ſuch demiſe, leaſe, or grant, laſt mentioned, the uſual and accuſtomed rents, heriots, and ſervices to be incident to and go along with the remainder or reverſion of the premiſes compriſed in ſuch demiſes, leaſes, or grants, reſpectively, be reſerved and made payable during the continuance thereof reſpectively, and ſo as by every ſuch demiſe, leaſe, or grant, to be made for any term or number of years not exceeding 21 years, there be reſerved and made payable during the continuance thereof, to be incident to and go along with the remainder or reverſion of and in the premiſes compriſed in ſuch leaſes, demiſes, or grants reſpectively, the beſt and moſt improved yearly rent that can be reaſonably had or gotten for the premiſes compriſed therein reſpectively, at the time of making ſuch leaſes, demiſes, or grants reſpectively, without taking any fine or premium, or any other thing in the nature or in lieu of a fine or premium, for or in reſpect of making any ſuch demiſe, leaſe, or grant, as laſt mentioned, and ſo as in all and every ſuch demiſes, leaſes, or grants, ſo to be made as aforeſaid, there be contained proper and uſual covenants on the parts of the leſſees reſpectively, and a proviſo or condition for entry, in caſe the rent or rents thereby reſpectively reſerved, be unpaid and in arrear, for the

ſpace of 21 days, and ſo as there be not contained in any ſuch demiſe, leaſe, or grant, any clauſe or words, whereby any power or authority ſhall be given to any leſſee to commit waſte, or whereby any leſſee ſhall be freed from, or made diſpuniſhable for doing or committing the ſame, and ſo as the leſſees do and ſhall execute counterparts of ſuch demiſes, leaſes or grants reſpectively, and alſo to demiſe, leaſe, or grant all or any part or parts of the waſte lands or commons, within the aforeſaid manors or any of them, to any perſon or perſons in poſſeſſion or reverſion, for any term or number of years not exceeding 21 years, determinable on the death or deaths of one, two, or three perſons, ſo as every ſuch demiſe or grant to be made of any of the ſaid waſte lands or commons, for any term or number of years, determinable on the death or deaths of one, two, or three perſon or perſons, and every demiſe, leaſe, or grant to be made in reverſion, together with all leaſes and demiſes then in being, of the ſame premiſes, be determinable on the deaths of three perſons at the moſt, and ſo as by every ſuch laſt mentioned demiſed leaſe or grant, there be reſerved and made payable during the continuance thereof, to be incident to and go along with the remainder or reverſion of the premiſes compriſed in ſuch leaſes, demiſes or grants reſpectively, ſuch yearly rent as can reaſonably be had or gotten, for the premiſes therein reſpectively compriſed, at the times of making ſuch demiſes, leaſes, or grants reſpectively, without taking any fine, premium, or foregift, for or in reſpect of the making any ſuch demiſes, &c. as is laſt mentioned, and ſo as there be contained

MARRIAGE.

MARRIAGE. therein, a proviſo or condition of re-entry, in caſe the rent or rents thereby reſpectively reſerved, be unpaid and in arrear, for the ſpace of 21 days, any thing herein before contained to the contrary thereof notwithſtanding: Provided alſo, and it is hereby further declared and agreed, that if the ſaid (*intended huſband,*) ſhall ſurvive the ſaid (*intended wife,*) then and in ſuch caſe it may and ſhall be lawful to and for the ſaid (*intended husband,*) by any deed or deeds, writing or writings, to be ſealed and delivered by him in the preſence of, and atteſted by, two or more credible witneſſes, to grant, limit or appoint, unto or to the uſe of any woman or women, whom he ſhall, after the deceaſe of the ſaid (*intended wife,*) marry or take to wife, for and during the life or lives of ſuch woman or women reſpectively, in nature of a jointure for her or them reſpectively, and in bar of dower, any rent or annual ſum not exceeding ——, tax free, without any deduction, to be iſſuing out of and chargeable upon all or any of the manors, meſſuages, &c. compriſed in the aforeſaid term of — years, and to be paid quarterly, on the four moſt uſual feaſts or days of payment of rents in the year, with ſuch powers and remedies for ſecuring the payment of the ſaid rent or annual ſum when in arrear, and ſuch term of years, for the better ſecuring the due payment thereof, to take effect immediately after the death of the ſaid (*intended husband,*) as to him ſhall ſeem meet, and ſuch grant, limitation, or appointment, to be made either before or after ſuch marriage: PROVIDED alſo, and it is hereby further declared and agreed, that it may and ſhall be lawful to and for the ſaid (*intended husband,*) by indenture, to be ſealed,

Power of joincturing any future wife.

Power of mortgaging by intended huſband.

&c. (at any time after the manor, &c. in and by the aforeſaid indenture bearing even date with theſe preſents ſo bargained and ſold unto the ſaid *G. C.* and *W. T.* and their heirs, as aforeſaid, ſhall, in purſuance and execution of the truſts hereby in them repoſed, be ſold and diſpoſed of for the purpoſes therein and hereinbefore mentioned of or concerning the ſame) to grant, demiſe, limit, or appoint all or any of the ſaid caſtle, &c. laſt hereby granted and releaſed, and mentioned, or intended ſo to be, unto any perſon or perſons for any term or number of years, by way of mortgage, for ſecuring the payment of any ſum of money, not exceeding the ſum of ———, and intereſt for the ſame, to the perſon who ſhall advance or lend ſuch ſum of money, and his, her, and their executors, adminiſtrators, and aſſigns, ſo as ſo much of the ſaid ſum of money as will be ſufficient to anſwer and make good the deficiency, (if any) of the money raiſed by ſale of the manor, &c. in the ſaid indenture bearing even date herewith, compriſed to pay and diſcharge the whole of the hereinbefore mentioned ſum of —— be paid to the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or the heirs, executors, or adminiſtrators of ſuch ſurvivor, to be by them or him applied for or towards payment and ſatisfaction of ſo much of the ſaid ſum of —— as ſhall then remain and be due and unpaid, and ſo as the ſaid eſtate and term of years be made defeaſible on payment of the principal ſum ſo advanced or lent as aforeſaid, and the intereſt thereby ſecured, and ſo as the ſaid (*intended huſband*) doth thereby covenant to pay and keep down ſuch intereſt during his life. PROVIDED alſo, and the true intent

MARRIAGE.

Powers of ſale and exchange by the truſtees.

MARRIAGE. and meaning of theſe preſents nevertheleſs is, that notwithſtanding any of the uſes or truſts hereinbefore limited, declared, or expreſſed, it may and ſhall be lawful, to and for the ſaid *G. C.* and *W. T.* and the ſurvivor of them, and the heirs of ſuch ſurvivor, during the joint lives of the ſaid (*intended huſband*) and ſaid (*intended wife*) with their conſent, and after her deceaſe, during the remainder of his life, (in caſe he ſhall ſurvive her) with his conſent, ſuch conſent to be ſignified or expreſſed in or by ſome deed or writing, to be ſealed and delivered by them or him ſo ſurviving, as aforeſaid, in the preſence of, and atteſted by two or more credible witneſſes, to grant, bargain, ſell, alien, releaſe and diſpoſe of and to grant, or convey in exchange for or in lieu of other lands, tenements, and hereditaments ſituate in that part of Great Britain called England, of a clear title, free from incumbrances, (except fee farm, chief, or quit rents). All or any of the caſtle, &c. hereinbefore reſpectively granted and releaſed, or mentioned or intended ſo to be, and the inheritance in fee ſimple thereof to any perſon or perſons and his, her, or their heirs, either together or in parcels, for ſuch price or prices in money, or for ſuch other equivalent in lands, tenements, and hereditaments, as to them the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or the heirs of ſuch ſurvivor ſhall ſeem reaſonable; and upon payment of the money ariſing by the ſale or ſales of any of the ſaid caſtle, &c. and premiſes as ſhall be ſo ſold or diſpoſed of for a valuable conſideration in money, to ſign and give proper receipts for the monies for which the ſame ſhall be ſo ſold, which receipt or

receipts of the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or the heirs of ſuch ſurvivor, ſhall be a ſufficient diſcharge and ſufficient diſcharges to the purchaſer and purchaſers, for the purchaſe-monies therein reſpectively acknowledged or expreſſed to be received, and that ſuch purchaſer or purchaſers ſhall not be afterwards anſwerable or accountable for any loſs, miſapplication, or non-application of the purchaſe-money, which in or by ſuch receipt or receipts ſhall be acknowledged or expreſſed to be received, and that when any of the ſaid caſtle and premiſes, &c. ſhall be ſold or diſpoſed of for a valuable conſideration in money, and ſuch receipt or receipts ſhall be ſo ſigned, and given for the purchaſe-monies as aforeſaid, and alſo when any of the ſame caſtle, &c. ſhall be granted or conveyed in exchange for or in lieu of any other ſuch lands and hereditaments as aforeſaid, and the lands and hereditaments taken in exchange ſhall be veſted in them the ſaid *G. C* and *W. T.* or the ſurvivor of them, or the heirs of ſuch ſurvivor, all and every the uſes, eſtates, truſts, powers, proviſos, and limitations, hereinbefore limited, declared and expreſſed of or concerning all and every ſuch of the ſaid caſtle, &c. as ſhall be ſo ſold or diſpoſed of, or granted or conveyed in exchange as aforeſaid, ſhall from thenceforth abſolutely ceaſe, determine, and be void to all intents and purpoſes whatſoever, and that all and every the ſame caſtle, &c. which ſhall be ſo ſold or diſpoſed of, or granted or conveyed in exchange as aforeſaid, ſhall immediately from thenceforth remain and be, and theſe preſents, and the grant and releaſe thereby made, ſhall, as to all ſuch of the ſame caſtle, &c. which ſhall be ſo

MARRIAGE.

MARRIAGE. reſpectively ſold or diſpoſed of, or granted or conveyed in exchange as aforeſaid, be and enure to the perſon or perſons reſpectively to whom the ſame ſhall be ſo reſpectively ſold and diſpoſed of, or granted or conveyed in exchange, and his, her, or their heirs reſpectively freed and exonerated, and for ever diſcharged of, and from all and every the uſes, eſtates, truſts, powers, proviſos, and limitations, hereinbefore limited, declared, or expreſſed, of or concerning the ſame reſpectively. AND it is hereby likewiſe declared and agreed that, when any of the caſtle, &c. hereinbefore reſpectively granted and releaſed ſhall, in purſuance of the ſaid power or authority, be ſold for a valuable conſideration in money, they the ſaid *G. C.* and *W. T.* and the ſurvivor of them, and the heirs, executors, or adminiſtrators of ſuch ſurvivor, ſhall with ſuch conſent as aforeſaid, teſtified in manner aforeſaid, and after the deceaſe of the ſaid (*intended husband,*) at the diſcretion of the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or the heirs, executors, or adminiſtrators of ſuch ſurvivor, with all convenient ſpeed lay out and inveſt the money ariſing by ſuch ſale or ſales in the purchaſe of other meſſuages, lands, and hereditaments ſituate, and being in that part of Great Britain called England, of a clear eſtate of inheritance in fee ſimple, free from incumbrances except fee farm, chief, or quit rents, and that as well all the ſaid meſſuages, lands, and hereditaments ſo to be purchaſed as aforeſaid, as all and every the lands and hereditaments which ſhall be ſo veſted in the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or the heirs of ſuch ſurvivor, in exchange for or in lieu of any

the caſtle hereinbefore reſpectively granted and releaſed, or mentioned, or intended ſo to be, which they or he ſhall have ſold and diſpoſed of, or granted or conveyed in purſuance of the ſaid power, ſhall be and remain, or be with all convenient ſpeed reſpectively conveyed, ſettled, and aſſured to, for, and upon ſuch and the ſame uſes, truſts, intents, and purpoſes, and charged in the ſame manner, and with and ſubject to ſuch and the ſame powers, proviſos, declarations, and agreements as are hereinbefore limited, declared, or expreſſed, of or concerning ſuch of the ſaid caſtle, &c. as ſhall be ſo reſpectively ſold or diſpoſed of, or granted or conveyed away in exchange as aforeſaid, or to ſuch and ſo many of them reſpectively as ſhall be then exiſting undetermined and capable of taking effect, and that in the mean time until ſuch convenient purchaſe or purchaſes of meſſuages, lands, and hereditaments as hereinbefore mentioned can be found, it may and ſhall be lawful to and for the ſaid *G. C.* and *W. T.* and the ſurvivor of them, and the heirs, executors, or adminiſtrators of ſuch ſurvivor, with ſuch conſent as, aforeſaid, and after the deceaſe of the ſaid (*intended husband,*) at the diſcretion of the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or the heirs, executors, or adminiſtrators of ſuch ſurvivor, to inveſt or place out the monies ariſing by ſuch ſale or ſales as aforeſaid, or any part or parts thereof in the public ſtock or funds, or on parliamentary or real ſecurities at intereſt, and from time to time to call in the ſame monies ſo inveſted or placed out as aforeſaid, or any part thereof, as often as they or he ſhall think fit, and again to place out and tranſpoſe MARRIAGE.

MARRIAGE. the ſame from time to time as to them or him ſhall ſeem meet, ſo as during the life of the ſaid (*intended huſband,*) the ſame be with ſuch conſent as aforeſaid. AND it is hereby declared, that the intereſts, dividends, and annual produce of the money ariſing by ſuch ſale or ſales as aforeſaid, and of the ſtocks, funds, and ſecurities wherein, or upon which the ſame or any part or parts thereof ſhall be ſo reſpectively inveſted or placed out as aforeſaid, ſhall from time to time go and be paid to, and be received and taken by ſuch perſon or perſons, and be applied to and for ſuch intents and purpoſes, and in ſuch courſe order, and manner, as the rents and profits of the meſſuages, lands, and hereditaments ſo to be purchaſed and ſettled as aforeſaid, would go and be payable and applicable in caſe ſuch purchaſe or purchaſes was or were actually made, and the purchaſed premiſes ſettled according to the declarations and directions hereinbefore contained. AND the ſaid (*intended huſband*) doth hereby for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, grant, and agree to and with the ſaid *G. C.* and *W. T.* and their heirs, by theſe preſents in manner following, that is to ſay; that he, the ſaid (*intended huſband,*) for and notwithſtanding any act, deed, matter, or thing whatſoever, by him or any of his anceſtors made, done, committed, or executed, or wittingly or willingly permitted or ſuffered to the contrary, is now lawfully and rightfully ſeiſed of or entitled to a good, ſure, perfect, abſolute, and indefeaſible eſtate of intereſt, in fee ſimple, of and in all the ſaid caſtle, &c. hereby reſpectively granted and releaſed, or mentioned or intended ſo to be, with

Covenants by intended huſband for the title.

their reſpective appurtenances without any condition, power of limitation, or revocation of uſe or uſes, or other reſtraint, matter, cauſe, or thing whatſoever which may, can, or ſhall alter, change, charge, incumber, leſſen, determine, defeat, or make void the ſame eſtate, except as is hereinbefore mentioned or recited, and hereinafter is excepted, and alſo that he the ſaid (*intended huſband*) for and notwithſtanding any ſuch act, deed, matter, or thing as aforeſaid, now hath in himſelf good right, full power, and lawful and abſolute authority to grant, bargain, ſell, releaſe, and convey all the ſaid caſtle, &c. hereby reſpectively granted and releaſed, or mentioned or intended ſo to be, with their reſpective appurtenances unto the ſaid *G. C.* and *W. T.* and their heirs, to, upon, and for ſuch uſes, truſts, intents, and purpoſes, and with and ſubject to ſuch powers, proviſos, declarations and agreements, as are hereinbefore limited, declared and expreſſed of or concerning the ſame reſpectively, and that all the ſaid caſtle, &c. with their reſpective appurtenances ſhall from henceforth remain, continue, and be to, upon, and for the uſes, truſts, intents, and purpoſes, and with, and ſubject to the powers, proviſos, declarations, and agreements hereinbefore limited, declared, and expreſſed, of and concerning the ſame reſpectively, and be accordingly, peaceably and quietly held and enjoyed without any let, ſuit, trouble, hindrance, moleſtation, or interruption, of, from, or by the ſaid (*intended husband,*) or his heirs, or any other perſon or perſons whomſoever lawfully or equitably claiming or to claim by, from, through, or under him, them, or any of them, or

MARRIAGE.

MARRIAGE. by, from, through, or under any of his anceſtors, and that free, and clear, and freely, and clearly, and abſolutely acquitted, exonerated, and diſcharged, or otherwiſe, by the ſaid (*intended husband,*) his heirs, executors, and adminiſtrators, well and ſufficiently ſaved, harmleſs, protected, and kept indemnified of, from, and againſt all, and all manner of former, and other gifts, grants, bargains, ſales, mortgages, uſes, intails, rents, charges, rents-ſeck, debts to the crown, ſtatutes, recognizances, judgments, executions, extents, ſeizures, ſequeſtrations, and all other eſtates, titles, charges, and incumbrances whatſoever, had, made, done, committed, or executed, or wittingly or willingly permitted or ſuffered by the ſaid (*intended husband,*) or any of his anceſtors, or any other perſon or perſons whomſoever lawfully or equitably claiming or to claim, by, from, through, or under him, them, or any of them, or by, with, or through his, their, or any of their acts, deeds, means, conſent, privity, or procurement, ſave and except the aforeſaid mortgages bearing date reſpectively the — day of ——, &c. made to, &c. for, &c. and alſo ſave, &c. and likewiſe ſave and except ſuch leaſes as are now ſubſiſting and in being of ſeveral of the ſame hereditaments and premiſes. AND moreover, that he the ſaid (*intended husband,*) and his heirs, and all and every other perſon or perſons whomſoever, having, or lawfully or equitably claiming or to claim any eſtate, right, title, or intereſt into or out of the ſaid caſtle, &c. hereby reſpectively granted and releaſed, or mentioned or intended ſo to be, or any of them, or any part thereof, or by, from, through, or under him, them, or any of them, or any of his anceſtors, other than and

except the perſon or perſons who is or are, or ſhall be entitled to, &c. ſhall and will from time to time, and at all times hereinafter, upon the requeſt of the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or his heirs, but at the coſts and charges of the ſaid *(intended husband,)* his heirs, executors or adminiſtrators, make, do, and execute, or cauſe or procure to be made, done, and executed, all and every ſuch further and other acts, deeds, matters, things, conveyances, and aſſurances in the law whatſoever, for the further, better, more perfect and abſolute conveying and aſſuring all the ſaid caſtle, &c. hereby reſpectively granted and releaſed, or mentioned, or intended ſo to be, with their appurtenances, to, upon, and for the uſes, truſts, intents, and purpoſes, and with and ſubject to the powers, proviſos, declarations, and agreements, hereinbefore limited, declared, and expreſſed, of or concerning the ſame reſpectively, or ſuch of them as ſhall be then ſubſiſting, or capable of taking effect, as by the ſaid *G. C.* and *W. T.* or the ſurvivors of them, or the heirs of ſuch ſurvivor, or his, their, or any of their counſel, learned in the law, ſhall be reaſonably deviſed, or adviſed and required, ſo as ſuch further conveyances and aſſurances, or any of them, do not contain any further or other covenant, or warranty, than againſt the perſon or perſons who ſhall be required to make and execute the ſame, and his, her, or their reſpective heirs, executors, adminiſtrators, acts and deeds only. And the ſaid *(intended husband,)* for himſelf, &c. further covenants, &c. with *G. C.* and *W. T.* their heirs, executors, and adminiſtrators, by theſe preſents, in manner following, that is to ſay,

MARRIAGE.

Covenants by intended huſband for making good deficiences, keeping down intereſt, &c.

MARRIAGE. that if the money ariſing by ſale of the manor, &c. by the aforeſaid indenture, bearing even date with theſe preſents, ſo bargained and ſold to *G. C.* and *W. T.* their heirs, in truſt to be ſold as aforeſaid, ſhall not, after payment thereout of the ſaid ſum of —, be ſufficient to pay and diſcharge the whole of the ſum of —, then, and in ſuch caſe, he the ſaid (*intended husband,*) his heirs, executors, or adminiſtrators, ſhall and will pay, or cauſe to be paid, to the ſaid *G. S.* and *W. T.* their heirs, executors, or adminiſtrators, ſuch ſum of lawful money, &c. together with ſo much of the money ariſing by ſale of the ſaid manor, &c. in the ſaid indenture, bearing even date herewith compriſed, as ſhall remain after payment of the ſaid ſum of ——, will be ſufficient fully to pay and diſcharge the ſaid ſum of —, to be by them the ſaid *G. C. W. T.* or the ſurvivor of them, or his heirs, executors, or adminiſtrators, applied and diſpoſed of for that purpoſe, and that the ſaid (*intended husband,*) his heirs, executors, or adminiſtrators, ſhall and will pay, or cauſe to be paid, the intereſt now due, and which ſhall hereafter accrue and become due for the ſaid ſum of —, and ——, or ſo much of ſuch intereſt as the rents and profits of the ſaid manor, &c. in the ſaid indenture of even date, herewith compriſed, which ſhall be received by, or come to the hands of them the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or his heirs, executors, or adminiſtrators, by virtue of the truſt hereby in them repoſed, will not extend to pay. AND ALSO, that he the ſaid (*intended husband,*) his heirs, executors or adminiſtrators, ſhall and will, when and ſo ſoon as the ſaid ſum of ——, and the

intereſt due, and to become due for the ſame, ſhall be paid and diſcharged as hereinbefore is mentioned, cauſe and procure the legal eſtate, in fee ſimple, of and in all ſuch of the manor, meſſuages, lands, tenements, and hereditaments, firſt hereby granted and releaſed or mentioned, or intended ſo to be, as are mentioned and compriſed in the ſaid indenture of releaſe or mortgage, of the —, &c. to be conveyed and aſſured, to, upon, and for the ſame uſes, truſts, intents, and purpoſes, and with and ſubject to the ſame powers, proviſos, declarations, and agreements, as are hereinbefore limited, declared, and expreſſed, of or concerning the ſame, or ſuch of them as ſhall be then ſubſiſting, or capable of taking effect; and likewiſe, that he the ſaid (*intended husband,*) his heirs, executors, or adminiſtrators, ſhall and will, at his and their own coſts and charges, when and ſo ſoon as the ſaid ſum of —, and the intereſt due and to become due for the ſame, ſhall be paid and diſcharged, by the ways and means hereinbefore mentioned, cauſe and procure the reſidues and remainders of the aforeſaid term of — and —— years of and in all ſuch of the manors, &c. laſt hereby granted and releaſed, or mentioned, or intended ſo to be, as are compriſed in the ſame terms reſpectively, to be ſeverally ſurrendered and extinguiſhed. AND this indenture further witneſſeth, that in purſuance of the aforeſaid propoſal, relating to the eſtates heretofore of the ſaid ſir *F. J.* the father, and for and in conſideration of the ſaid intended marriage, it is hereby mutually agreed, by and between the ſaid (*intended wife*) and (*intended husband,*) with the privity and approbation, as well of the ſaid *G. C.* as the ſaid *D. M.* and *F. G.*

MARRIAGE

Further Witneſs the lady's friends covenant that ſhe ſhall, when of age, bar her entail in the ſettled premiſes, and ſettle them to the preceding uſes.

MARRIAGE. teſtified by their ſeverally being parties to, and ſealing and delivering theſe preſents, in manner following, and the true intent and meaning of all the ſaid parties hereto, ſo far as they are ſeverally intereſted is, that if the ſaid intended marriage takes effect, and the ſaid (*intended wife*) lives to attain the age of 21 years, ſhe the ſaid (*intended wife,*) ſhall and will, either alone, or jointly with the ſaid (*intended husband,*) if he ſhall be then living, as ſoon after ſhe ſhall attain the age of 21 years as may be, make, do, and execute all ſuch acts, deeds, conveyances, and aſſurances, in the law, whatſoever, as counſel ſhall adviſe and think neceſſary for effectually barring and deſtroying the eſtate tail of her the ſaid (*intended wife,*) and all the remainders and reverſions expectant or dependant thereon, of and in one undivided moiety of the aforeſaid manor of ——, and of all the ſaid meſſuages, cottages, lands, tenements, and hereditaments, as well freehold as copyhold, ſituate, lying, and being in the aforeſaid pariſhes of, &c. in the county of ——, and ——, in the county of ——, with their reſpective appurtenances, and conveying, ſurrendering, ſettling, and aſſuring, the ſaid moiety or half part, of and in all the ſaid freehold and copyhold manor, meſſuages, cottages, lands, tenements, and hereditaments, with their reſpective appurtenances, to the uſes hereinafter mentioned, that is to ſay, to the uſe of the ſaid (*intended husband*) and his aſſigns, for and during his life, and from and after his deceaſe, to the uſe of the ſaid (*intended wife,*) and her aſſigns, for and during her life, and from and after her deceaſe, to the uſe of the firſt and other ſon and ſons of the ſaid (*intended huſband,*) on the body of the ſaid (*intended wife,*) to

be begotten ſucceſſively in tail male, and for default of ſuch iſſue, to the uſe or uſes of ſuch perſon or perſons, and for ſuch eſtate or eſtates, intents and purpoſes, as ſhe the ſaid (*intended wife,*) notwithſtanding her coverture by any deed or deeds, writing or writings, to be ſealed and delivered by her in the preſence of, and atteſted by two or more credible witneſſes, with or without power of revocation, and of limiting or appointing new or other uſe or uſes, ſhall direct, limit, or appoint, and in default of ſuch direction, limitation, or appointment, then to the uſe of her the ſaid (*intended wife,*) her heirs and aſſigns, for ever, and alſo for conveying, ſettling, and aſſuring, one undivided moiety or half part of the ſcite and capital meſſuage of the ſaid manor of ——, and of the rectory of ——, and all other the meſſuages, lands, and tenements, in the ſaid pariſh of —, in the aforeſaid indenture of leaſe of the &c. mentioned and compriſed, with the appurtenances, to ſuch, and the ſame uſes as are hereinbefore mentioned, of or concerning the undivided moiety of the freehold and copyhold manor, meſſuages, cottages, lands, tenements, and other hereditaments, in the ſaid pariſhes of &c. in the county of ——, and —, in the county of ——, ſo far as the nature and tenure of the ſaid leaſehold premiſes, and the rules of law or equity will permit, or ſuch or ſo many of them as ſhall be then ſubſiſting, or capable of taking effect, and likewiſe for effectually barring and deſtroying the eſtate tail which the ſaid (*intended wife*) will be entitled to, of, and in one undivided moiety of the lands, &c. to be purchaſed by the ſaid exchequer annuities, and other perſonal property, to a great MARRIAGE.

MARRIAGE.

amount conſiſting of ſtocks, &c. and conveying, ſettling, and aſſuring the ſame undivided moiety to the ſame uſes, &c. as laſt before mentioned. AND it is hereby further agreed and declared, that in the ſettlements ſo to be made as well of the undivided moiety of the ſaid freehold, copyhold, and leaſehold premiſes, as of the lands, tenements, and hereditaments, ſo to be purchaſed as aforeſaid, there may and ſhall be inſerted and contained, limitations to truſtees, for preſerving the contingent remainders, and a power for the ſaid (*intended wife,*) if ſhe ſurvives the ſaid (*intended husband,*) to charge the premiſes with the payment of any ſum or ſums of money, not exceeding in the whole the ſum of —— for ſuch purpoſes as ſhe ſhall think fit, and alſo ſuch covenants, powers, and clauſes, as the ſaid (*intended wife*) and (*intended husband,*) if he ſhall be then living, and the ſaid *G. C.* and *W. T.* or the ſurvivor of them or his heirs ſhall think fit, and their counſel learned in the law, ſhall adviſe and approve of. AND the ſaid (*intended husband,*) doth hereby for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid *G. C.* and *W. T.* and their heirs, that if the ſaid intended marriage ſhall take effect, and the ſaid (*intended wife,*) lives to attain the age of 21 years, and the ſaid (*intended husband*) is then living, he the ſaid (*intended husband,*) will at any time or times hereafter, upon the requeſt of the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or his heirs, but at coſts and charges of the ſaid (*intended husband,*) his executors, or adminiſtrators, join and concur with the ſaid (*intended wife,*) in making, doing, and execut-

Intended huſband covenants to concur with his wife in barring the ſaid entails.

ing all such acts, deeds and conveyances in the law, as counsel shall advise and think necessary, for barring and destroying her estate tail, and all remainders and reversions expectant or dependant thereon, of and in one undivided moiety of all the said freehold and copyhold premises, and conveying, surrendering, settling, and assuring the said undevided moiety of all the said freehold and copyhold premises, to the uses herein before mentioned and expressed of and concerning the same, and also for conveying, settling, and assuring one undivided moiety of the said leasehold premises, to such and the same uses as are herein before mentioned or expressed, of or concerning the undivided moiety of the said freehold and copyhold premises, so far as the nature and tenure of the said leasehold premises, and the rules of the law or equity will permit, and likewise for barring and destroying the estate tail, which the said (*intended wife*) will be entitled to, of and in one undivided moiety of the lands, tenements, and hereditaments, which shall be purchased with the money arising by sale of the said Exchequer annuities, Bank stock, East India stock, &c. or any of them, and all remainders, expectant or dependant on such estate tail, and conveying, settling, and assuring the same undivided moiety of the same lands, tenements, and hereditaments, as and when the same shall be purchased to such and the same uses as are herein before mentioned and expressed, of or concerning the undivided moiety of the freehold and copyhold premises in the said counties of —— and ——, or such of them as shall be then subsisting, or capable of taking effect. And the said (*intended husband*) doth for

MARRIAGE.

Covenant by husband.

MARRIAGE. himſelf, his heirs, executors, or adminiſtrators, further covenant, promiſe, and agree, to and with the ſaid *G. C.* and *W. T.* their executors or adminiſtrators, by theſe preſents, in manner following, (that is to ſay,) that if the ſaid intended marriage takes effect, he the ſaid (*intended husband,*) ſhall and will, from time to time, during the joint lives of him and the ſaid (*intended wife,*) pay, or cauſe to be paid one moiety or half part of the rents and profits by the preſent ſubſiſting leaſe of the ſaid leaſehold premiſes in the aforeſaid pariſh of ——, reſerved and made payable, and by any future leaſe thereof, to be reſerved and made payable as and when ſuch rents and profits ſhall become due and payable. AND alſo ſhall and will from time to time, during the joint lives of him the ſaid (*intended husband,*) and (*intended wife,*) when and as often as any one of the lives in the preſent ſubſiſting leaſe of the ſaid leaſehold premiſes, ſhall happen to die, uſe his endeavour to procure as good and effectual leaſe to be made and executed by the Biſhop of — for the time being, of the ſaid leaſehold premiſes, to the aforeſaid *F. G.* if he ſhall be then living, and if he ſhall be dead, then to ſome proper perſon or perſons, and his or their heirs, for and during the life of ſome fit perſon, and ſuch other of the lives in the ſaid preſent leaſe as ſhall be then in being, and the life of the longeſt liver of them, at or under the like rents, covenants and agreements, as are in and by the preſent ſubſiſting leaſe thereof reſerved and contained, and from time to time during ſuch joint lives as aforeſaid, when and as often as any one of the lives in ſuch new leaſe, or any further leaſe of the ſaid leaſehold premiſes, ſhall happen to

that he will pay a moiety of the rent of ſubſiſting leaſe.

and procure renewals,

die, in like manner endeavour to procure a renewal of the then ſubſiſting leaſe of the ſaid premiſes, for the lives of three perſons then in being, and the life of the longeſt liver of them, and that he the ſaid (*intended husband,*) his executors and adminiſtrators, ſhall and will from time to time, during the joint lives of him, and the ſaid (*intended wife*) when ſuch new leaſe, or any future renewed leaſe, as aforeſaid, ſhall be made and executed, of the ſaid leaſehold premiſes, pay, or cauſe to be paid, one moiety or half part of the fine, for making or granting any ſuch new or renewed leaſe or leaſes of the ſame leaſehold premiſes, and of the fees, coſts and charges relating thereto; and it is hereby declared and agreed, that the perſon and perſons to whom any ſuch new or renewed leaſe or leaſes ſhall be made and executed, ſhall in the mean time, and until one moiety or half part of the leaſehold premiſes, ſhall be ſo ſettled as aforeſaid, ſtand and be ſeiſed of a moiety, or half part of the ſaid premiſes, in truſt for the ſaid (*intended wife,*) and the heirs of her body, and after ſuch ſettlement ſhall be made and executed, then in truſt for ſuch perſons as for the time being, ſhall be entitled thereto, by virtue and according to the true intent and meaning of the ſaid ſettlement. AND it is hereby likewiſe mutually agreed, by and between the ſaid (*intended husband,*) and (*intended wife,*) with the privity and approbation of the ſaid *G. C.* and *W. T.* in manner following, (that is to ſay) that if the ſaid intended marriage takes effect, and the ſaid (*intended wife*) lives to attain the age of 21 years, and the aforeſaid *F. E.* die without iſſue, in the life of the ſaid (*intended wife,*) and ſhe the ſaid (*intended wife*) becomes

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and pay a moiety of the fines upon ſuch renewals;

and until ſuch renewed leaſe be ſettled, leſſees ſhall hold for the truſts aforeſaid.

Intended wife to bar the entails of the other moiety of the ſame premiſes if ſhe come into poſſeſſion thereof.

MARRIAGE. entitled in poſſeſſion to the other moiety or half part, now of the ſaid *F. E.* of and in the ſaid freehold, leaſehold, and copyhold in the ſaid counties of —— and ——, or of and in the lands, tenements, or hereditaments which ſhall be ſo purchaſed as aforeſaid, ſhe the ſaid (*intended wife*) ſhall and will as ſoon as may be, after ſhe the ſaid (*intended wife*) ſhall become ſo entitled, in poſſeſſion as aforeſaid, and have attained the age of 21 years, either alone or jointly with the ſaid (*intended huſband,*) if he is then living, make, do, and execute, all ſuch acts, deeds, conveyances, and aſſurances in the law whatſoever, as counſel ſhall adviſe, for effectually barring and deſtroying, the eſtate tail which ſhe the ſaid (*intended wife*) will then be entitled to, and all remainders and reverſions expectant and dependant thereon, of and in the ſaid laſt mentioned moiety, or half part of the ſaid freehold and copyhold premiſes, and lands, tenements, and hereditaments which ſhall be ſo purchaſed as aforeſaid, and conveying, ſurrendering, ſettling and aſſuring the ſame moiety or half part of and in the ſaid freehold and copyhold premiſes, and alſo of and in the lands, tenements, and hereditaments which ſhall be ſo purchaſed as aforeſaid, and likewiſe of in the ſaid leaſehold premiſes to ſuch or the like uſes, and with and ſubject to ſuch or the like powers as are hereinbefore mentioned, of or concerning the ſame undivided moiety or half part, now of her the ſaid (*intended wife*) of and in the ſaid freehold and copyhold premiſes, or as near thereto as the circumſtances of the caſe will permit. AND the ſaid (*intended huſband*) doth hereby for himſelf, his heirs, executors or adminiſtrators, covenant, promiſe, and

And huſband will concur therein.

agree to and with the ſaid *G. C.* and *W. T.* and their heirs, that if the ſaid intended marriage takes effect, and if the ſaid (*intended wife*) lives to attain the age of 21 years, and the ſaid *F. F.* dies without iſſue in the life time of the ſaid (*intended wife*) and ſhe the ſaid (*intended wife*) becomes entitled in poſſeſſion to the ſaid other moiety or half part, now of the ſaid *F. E.* in the ſaid freehold, copyhold, and leaſehold premiſes in the ſaid counties of &c. or, of, or in the lands, tenements, or hereditaments which ſhall be ſo purchaſed as aforeſaid, and the ſaid (*intended husband*) is then living, he the ſaid (*intended husband*) will at any time or times thereafter, upon the requeſt of the ſaid *G. C.* and *W. T.* or the ſurvivor of them, or his heirs, but at the coſts and charges of the ſaid (*intended husband*) his executors or adminiſtrators, join all and be concerned with the ſaid (*intended wife*) in making, doing, and executing all ſuch acts, deeds, conveyances, and aſſurances in the law, as counſel ſhall adviſe, for barring and deſtroying her eſtate tail, and all remainders or reverſions expectant or dependant thereon, of and in the ſaid other moiety, or half part which the ſaid (*intended wife*) will then be entitled to, of, and in the ſaid other moiety or half-part of the ſaid freehold and copyhold premiſes, and lands, tenements, and hereditaments which ſhall be ſo purchaſed as aforeſaid, and all remainders and reverſions expectant or dependant on ſuch eſtate tail, and conveying, ſurrendering, ſettling, and aſſuring the ſaid moiety or half part, of and in the ſaid freehold and copyhold premiſes, and alſo of and in the lands, tenements and hereditaments which ſhall be ſo purchaſed as afore-

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said, and likewise of and in the said leasehold premises, to such or the like uses, and with and subject to such or the like powers as are hereinbefore mentioned, of, or concerning the moiety or half part which the said *(intended wife)* is now entitled to, of, and in the said freehold and copyhold premises, or as near thereto as the cirumstances of the case will permit: AND this indenture likewise further witnesseth, that in pursuance of the aforesaid proposal, relating to the estates, late of the said Sir *F. T.* and in consideration of the said intended marriage, it is hereby mutually agreed, by and between the said *(intended husband,)* and *(intended wife,)* with the privity and approbation of the said *G. C.* and *W. T.* in manner following, (that is to say,) that if the said intended marriage takes effect, and the aforesaid sum of — shall at any time during the joint lives of them the said *(intended husband)* and *(intende dwife,)* be raised pursuant to the directions of the will of the said Sir *F. T.* and the aforesaid decree of, &c. then and in such case, one moiety of the interest of the said sum of — shall from thenceforth during such joint lives as aforesaid, be paid to the said *(intended wife)* for her sole and separate use, and disposal, exclusive of the said *(intended husband)* according to the true intent and meaning of the will of the said Sir *F. T.* and until such sum shall be raised, a moiety of the rents of &c. and of the interest of said £——, bank stock; and that the estate tail of the said *(intended wife)* in the said premises, of one moiety, after raising the said sum of £— and her estate tail to a moiety of lands to be purchased by said £——, according to the codicils of Sir *J. F.* the father, shall not be barred without the

Further Witness.

consent of the said trustees. [Covenants from (*intended husband*) for further assuring the moiety of the interest of said rents, &c. on the request of trustees. Covenant from (*intended husband*) not to join with wife, to bar (*intended wife's*) estate tail in a moiety of said last mentioned premises, or those to be purchased with said ———, without the consent of trustees.] Provided always, and it is hereby declared and agreed, that the said *G. C. W. T.* and *P.* earl of ——, *B. R. S. C. T.* and *A. T.* or any of them, or any of their heirs, executors, or administrators, shall not be charged with, or accountable for any sum or sums of money whatsoever, other than such only as by virtue, or in pursuance of these presents, shall be actually received by, or come to his, their, or any of their hands respectively, and shall not be accountable or answerable, the one for the other, or others of them, or for the receipts, payments, acts, or wilful defaults of the other or others of them, but each of them for his own several and respective receipts, payments, acts, and wilful defaults only, their joining in any receipt or receipts, for the sake of conformity notwithstanding, nor shall they or any of them be accountable or answerable for any loss or damage which may happen by depositing or paying the trust monies in any bank or bankers hands, or elsewhere, for safe custody, or by laying out the said trust monies in any purchase or purchases, or by investing or placing out the same in the public stocks or funds, or on parliamentary or real securities, so as during the life of the said (*intended husband,*) the same be with such consent as is hereinbefore mentioned, or for any loss or da-

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Provisos for indemnifying trustees.

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mage which may happen in, or relating to, any of the truſts aforeſaid, or the management or execution thereof, without his or their reſpective wilful act, neglect, or default; and that the ſaid *G. C.* and *W. T. P.* earl of *C. B. R. T. C. S.* and *T. A.* their, and every of their heirs, executors, and adminiſtrators, may from time to time deduct and retain in his and their hands, and reimburſe him and themſelves, and pay to his or their co-truſtees, or truſtees reſpectively, out of all or any of the monies which by virtue of theſe preſents, or any of the truſts aforeſaid, ſhall be received by, or come to his, their, or any of their hands reſpectively, all ſuch coſts, charges, and expences, as he, they, or any of them, ſhall pay, expend, or be put unto, in or about, or relating to any of the truſts aforeſaid, or otherwiſe relating to, or in conſequence of theſe preſents. IN WITNESS, &c.

Articles of SEPARATION *between Huſband and Wife* (a) *occaſioned by various Diſputes (by reaſon whereof a Divorce had been ſued for, and was then depending) containing an Agreement on the part of the Huſband to allow his Wife an Annuity, pay certain Debts of her contracting, the Coſts of the exiſting Suit, and on the part of the Wife, that ſhe will not oppoſe the*

(a) For the conſtruction of deeds of this kind, particularly with reſpect to the mode in which they ſhould be framed, ſo as to render them good againſt the huſband's creditors, ſee Stephens v. Olive, 2 *Br. Ch. Rep.* 90. and 1 *Fonb. Eq.* 101, 109, 111, 113, notes. Alſo 2 *Atk.* 512, and Compton *v.* Collins, 1 *H. Bk. Rep.* 334, and *ante p.* 14, 15, n. (*a*) 17, 36, 38. n (*a*).

ſaid Suit; that her Truſtees ſhall exonerate her Huſband from her future Debts, &c.

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THIS Indenture tripartite, made the — day of — &c. between *J. P. B.* of —— in the county of —, eſq. of the firſt part (*huſband*); *E. B.* (*wife* of the ſaid *J. P. B.*) of the ſecond part; and (*Truſtees*) of the third part. Whereas great and unhappy differences and diſputes have ariſen, and do ſtill ſubſiſt, between the ſaid *J. P. B.* and the ſaid *E. B.* his wife, by reaſon whereof a certain cauſe of ſeparation or divorce from bed, board, and mutual cohabitation, is now proſecuted in the conſiſtorial and eccleſiaſtical court of London, by the ſaid *J. P. B.* againſt the ſaid *E. B.* his wife, for adultery; and ſeveral witneſſes have been examined, and are ſtill to be examined, in ſupport of the bill exhibited, or allegations to be exhibited, in the ſaid cauſe. And whereas the ſaid *J. P. B.* and the ſaid *E. B.* his wife, are deſirous to prevent all unneceſſary delays and expences that may be occaſioned by a perverſe defending and litigating the ſaid ſuit for a recrimination, alimony, or otherwiſe. And whereas the ſaid *J. P. B.* and the ſaid *E. B.* his wife, have mutually agreed to an abſolute ſeparation from bed, board, and cohabitation, and to the end that the ſaid *E. B.* may, upon ſuch ſeparation, have a competent proviſion for her maintenance, ſuitable to the abilities of the ſaid *J. P. B.* he the ſaid *J. P. B.* hath agreed to pay and allow the ſaid *E. B.* an annuity or yearly ſum of ——, by quarterly payments; that is to ſay, at Michaelmas-day, Chriſtmas-day, Lady-day, and Midſummer-day; the firſt quarterly payment to begin and be made at the time of executing theſe preſents, as due and paiable at

Parties.

Recital that unhappy differences and diſputes have ariſen, and ſtill ſubſiſt, between the ſaid huſband and wife, by reaſon whereof a divorce is ſued for by the ſaid huſband againſt the ſaid wife for adultery, which is not yet finiſhed.

That the ſaid parties are deſirous of preventing unneceſſary delays in the proſecution thereof.

And have agreed to an abſolute ſeparation.

The ſaid huſband has agreed to allow the ſaid *E. B.* an annuity of — by quarterly payments.

And has agreed to pay off ſuch of her debts as are contained in a certain ſchedule, a-

SEPARATION mounting to — at two different times, as alſo all charges of the preſent ſuit.

Midſummer laſt paſt. And further, the ſaid *J. P. B.* hath agreed to pay off and diſcharge all ſuch of the debts of the ſaid *E. B.* as are mentioned and continued in a certain ſchedule thereof hereafter inſerted, amounting to the ſum of ——, whereof the ſum of —— he hath agreed to pay at the time of executing theſe preſents, and the further ſum of ——, being the reſt and reſidue of the ſaid ſum of ——, he hath agreed to pay within three months then next. And further, the ſaid *J. P. B.* hath agreed to pay all coſts and charges hitherto accrued, or become due, in ſuch defence of the ſaid ſuit for adultery as aforeſaid. And whereas, in conſideration of ſuch agreement of the ſaid *J. P. B.* and *E. B.* ſhe the ſaid *E. B.* hath promiſed and agreed not to recriminate nor otherwiſe to protract, or in anywiſe hinder or oppoſe the ſaid ſuit, againſt her the ſaid *E. B.* for adultery, ſave only in defence of her own innocence. And hath further promiſed and agreed, that ſhe will pay off and diſcharge all other her debts not contained in the ſaid ſchedule hereinafter inſerted; AND whereas it was at the ſame time mutually agreed by and between the ſaid *J. P. B.* and the ſaid *E. B.* his wife, to inſert ſuch further covenants and reſtrictions in the intended deed of ſeparation as might be thereafter thought moſt conducive to enforce the above-mentioned payment. Now therefore, this indenture witneſſeth, that for the conſideration hereinbefore mentioned, and alſo for and in conſideration of —— of lawful money of Great Britain, to the ſaid *J. P. B.* well and truly paid by the ſaid ——, the receipt whereof is hereby acknowledged, and for other good cauſes and conſiderations him the ſaid *J. P. B.* here-

In conſideration of which agreement the ſaid *E. B.* hath agreed not to recriminate or oppoſe this ſuit, ſave only in defence of her own innocence, and hath promiſed to pay off all her debts, except as aforeſaid, with mutual agreement, that they will inſert ſuch clauſes as may be conducive to enforce ſaid payment.

Now therefore this indenture witneſſeth.

Conſiderations that ſaid J. P. B. doth covenant with ſaid truſtees, that he will pay to them or their execu-

unto eſpecially moving, he the ſaid *J. P. B.* doth for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid —— their executors, adminiſtrators, and aſſigns, that he the ſaid *J. P. B.* ſhall and will pay, or cauſe to be paid to the ſaid ——, their executors, adminiſtrators, and aſſigns, the ſaid annuity or yearly ſum of ——, of lawful money of Great Britain, for and during the term of his natural life, in caſe the ſaid *E. B.* ſhall ſo long live; to be paid by quarterly payments, at the four moſt uſual times of payments in the year (that is to ſay) at Michaelmas-day, Chriſtmas-day, Lady-day, and Midſummer-day; the firſt payment to begin and to be made at the time of the execution of theſe preſents, and to be accounted as due at Michaelmas-day laſt. Upon truſt nevertheleſs that they the ſaid —— ſhall, and do pay, apply, and diſpoſe of the ſame to the ſaid *E. B.* or to ſuch perſon or perſon, and to ſuch uſes, intents, and purpoſes only, as ſhe the ſaid *E. B.* wife of the ſaid *J. P. B.* without his order, direction, intermeddling, or controul, notwithſtanding her coverture (except as hereafter is mentioned) ſhall by any writing or writings, to be ſigned by her the ſaid *E. B.* with her name, of her own proper hand-writing, from time to time direct and appoint, for the ſeparate, peculiar, and particular uſe and diſpoſal of her the ſaid *E. B.* And further, the ſaid *J. P. B.* for himſelf, his executors, and adminiſtrators, doth covenant, promiſe, and agree, to and with the ſaid ——, their executors, adminiſtrators, and aſſigns, that he the ſaid *J. P. B.* ſhall and will pay and diſcharge,

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tors, the ſaid annuity of —— for his wife in caſe his ſaid wife ſo long live, by yearly payments upon truſt to pay and diſpoſe of the ſame as the ſaid *E. B.* as if they were ſole and unmarried ſhall direct, except as hereinafter is excepted.

Covenant from the ſaid huſband that all ſuch debts as hereinbefore mentioned amounting to — ſhall be paid by him.

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or cauſe to be paid and diſcharged, all ſuch of the debts of the ſaid *E. B.* as are mentioned and contained in a certain ſchedule thereof thereafter inſerted, amounting to the ſum of ——; and that the ſum of ——, part thereof, ſhall be paid at the time of executing theſe preſents, for and towards the diſcharge of the debts following, part of the ſaid ſchedule debts amounting to the ſum of —— (that is to ſay) to the ſaid ——, &c. &c. and that the further ſum of ——, being the reſt and reſidue of the ſaid ſum of ——, ſhall be paid within three months next enſuing the date hereof, and in full diſcharge of all the reſt and reſidue of the ſaid ſchedule debts, amounting to the ſaid ſum of ——. And further, that he the ſaid *J. P. B.* ſhall and will bear and pay all coſts and charges which have hitherto accrued, or become due, and which ſhall accrue, or become due, from the ſaid *E. B.* for or on account of ſuch her defences of the ſaid ſuit againſt the ſaid *J. P. B.* AND the ſaid —— for themſelves, their executors, adminiſtrators, and aſſigns, by and with the conſent, deſire, and approbation of the ſaid *E. B.* ſignified by her being a party thereto, and ſealing and delivering theſe preſents, do covenant, promiſe, and agree, to and with the ſaid *J. P. B.* his heirs, executors, and adminiſtrators, that ſhe the ſaid *E. B.* ſhall not nor will recriminate or otherwiſe protract the ſaid ſuit againſt her the ſaid *E. B.* nor in anywiſe hinder or oppoſe the proceedings thereupon, ſave only in defence of her own innocence; and further, that they the ſaid ——, their executors, adminiſtrators, and aſſigns, ſhall and will

That he will pay, or cauſe to be paid, all coſts and charges of the preſent ſuit.

Covenant from the ſaid truſtees for themſelves, &c. by the appointment of the ſaid *E. B.* that ſhe will not hinder or oppoſe the ſaid ſuit, ſave only in defence of her own innocence.

That they ſhall apply the ſaid annuity in ſuch

pay, apply, and diſpoſe of, the ſaid annuity, or yearly ſum of — to the ſaid *E. B.* or to ſuch perſon or perſons, and to ſuch uſes, intents, and purpoſes only as ſhe the ſaid *E. B.* without the order, intermeddling, or controul of the ſaid *F. P. B.* except as hereinafter is mentioned, ſhall by any writing or writings, to be ſigned by her from time to time direct and appoint in manner, and for the purpoſe aforeſaid. AND it is hereby declared and agreed by and between all the ſaid parties to theſe preſents that, upon receipt and diſpoſal of the ſaid annuity, or yearly ſum of —, or any part or parcel thereof, or the profit, proceeds, or intereſt thereof, the ſaid *E. B.* notwithſtanding her coverture, and as if ſhe was ſole and unmarried, ſhall and may make acquittals and other writings teſtifying the receipt and diſpoſal thereof, or the produce thereof, and that ſuch acquittals and writings ſhall be good and valid againſt them the ſaid *J. P. B.* and the ſaid *E. B.* his wife, their reſpective heirs, executors, and adminiſtrators, and that they the ſaid ———, their executors, adminiſtrators, and aſſigns, ſhall be chargeable with, and accountable, only for what they ſhall actually reſpectively receive, and not the one for the other, nor with or for the receipts, acts, defaults or diſburſements of the other, and that they, and every of them ſhall and may be ſaved harmleſs, and deduct to themſelves by and out of the ſaid annuity or yearly ſum of —, all ſuch coſts, charges, damages, and expences, as they or any of them ſhall bear, pay, ſuſtain, or be put unto by reaſon of the premiſes, or in any wiſe touching or concerning the ſame. PROVIDED always, and as is

SEPARATION

manner and to ſuch intents as the ſaid *E. B.* ſhall by any writing direct.

Agreement between ſaid parties, that E. B upon receipt of ſaid annuity or any part therof, may give receipts for the ſame;

ſuch receipt to be good and valid againſt ſaid huſband or wife, &c.

That the ſaid truſtees ſhall only be accountable for what they actually receive, and not the one for the other;

alſo for indemnifying them for all coſts, &c. on account of the premiſes.

Proviſo,

SEPARATION

that if said E. B. at any time during said separation contract any debt for maintenance, &c.

and shall not pay the same within two months after notice given by said J. P. B. (such debt not being incurred by non-payment of said annuity,)

or if said J. P. B. shall be actually sued for such debt,

and the said E. B. shall not within one month after notice given to said trustees pay the same, and the costs attending the same,

then the said trustees, &c. shall out of the said annuity pay such debts, &c.

Covenant from said J. P. B. that it may be lawful for said E. B. to live separate from him as if she were sole and unmarried.

hereby declared and agreed by and between all the said parties to these presents, that if the said *E. B.* shall at any time hereafter, during such separation, contract any debt for her maintenance or clothes, or otherwise howsoever, and shall not pay the same within the space of two months after notice shall be given of the same by the said *J. P. B.* such debt, (not being contracted by or through the default of the said *J. P. B.* in not paying or remitting to her the said *E. B.* the quarterly payment of the said annuity,) or if the said *J. P. B.* shall be actually and bona fide sued for any debt so contracted by the said *E. B.* during such separation, as aforesaid, (except as before is excepted,) and the said *E. B.* shall not within one month after notice in writing, given to the said ————, their executors, administrators, or assigns, or some or one of them, or to the said *E. B.* well and truly pay or cause to be paid the same, and the costs of such suit therein mentioned in either of such cases, and so often as the same shall so respectively happen, the said ————, their executors, administrators, and assigns, shall, out of the said annuity or yearly sum of —, pay such debt and costs, and so toties quoties as the case shall happen, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. And the said *J. P. B.* for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said ————, their executors, administrators, and assigns, that notwithstanding the coverture between them the said *J. P. B.* and the said *E. B.* his wife, it may and shall be lawful to

and for the ſaid *E. B.* to live apart and ſeparate from the ſaid *J. P. B.* in ſuch ſort and manner as if ſhe was ſole and unmarried, and that notwithſtanding the coverture between them, he, the ſaid *J. P. B.* ſhall not compel her, the ſaid *E. B.* to any cohabitation with him, and that the ſaid *E. B.* ſhall be freed and diſcharged from the power, command, rule, reſtraint, authority, and government of the ſaid *J. P. B.* and that he, the ſaid *J. P. B.* ſhall not, nor will at any time or times hereafter, on any cauſe or pretence whatever, ſave and except for the cauſe of adultery, ſue any perſon or perſons for boarding, receiving, protecting, or aſſiſting the ſaid *E. B.* his wife, but that ſhe may live as if ſhe were ſole and unmarried, without any reſtraint or coercion of the ſaid *J. P. B.* or any other perſon by his means, conſent, privity or procurement, and that he, the ſaid *J. P. B.* ſhall not at any time hereafter diſturb the ſaid *E. B.* his wife in her manner or way of living, or of her liberty or freedom of going and coming, whither, where, and when ſhe pleaſes, ſave and except for the cauſe of adultery, as aforeſaid. AND further it is agreed by and between the ſaid parties to theſe preſents, ſo far as in them lieth, that the ſaid *E. B.* or any perſon or perſons on her behalf ſhall not, nor will at any time hereafter commence or proſecute any ſuit or ſuits in any court or courts whatſoever, to compel and force the ſaid *J. P. B.* to cohabit with the ſaid *E. B.* his wife, or compel him to pay, or allow unto her, the ſaid *E. B.* while the ſaid *J. P. B.* and the ſaid *E. B.* ſhall live ſeparate and apart, any ſum or

SEPARATION.

That notwithſtanding coverture, he will not compel her to cohabit with him;

that he will not (except as aforeſaid,) proſecute any perſon for aſſiſting his ſaid wife;

but that ſhe may live as ſole and unmarried.

Agreement between the ſaid parties, that the ſaid E. B. ſhall not commence any ſuit to compel ſaid J. P. B. to cohabit with ſaid E. B. or to allow her any further maintenance.

SEPARATION

And laſtly, that it is the true meaning of theſe preſents that ſaid J. P. B. is at full liberty to proſecute and carry on ſaid ſuit for adultery.

ſums of money whatſoever on account of alimony, other than what is allowed and confirmed unto her by theſe preſents. And laſtly, it is agreed by and between the ſaid parties, and it is the true intent and meaning of theſe preſents, that for and notwithſtanding any thing in theſe preſents mentioned to the contrary, the ſaid *J. P. B.* is at liberty, and may carry on his ſaid ſuit againſt the ſaid *E. B.* for adultery, and that he may in ſuch ſuit plead any freſh matter previous to the commencement thereof, and examine and obtain a decree thereupon, and bring a bill or bills in parliament or otherwiſe as the ſaid *J. P. B.* ſhall be adviſed for the furtherance of juſtice, and furtherance, confirmation, and completion of a divorce. In witneſs, &c.

V. AGREEMENTS RELATIVE TO MISCELLANEOUS SUBJECTS.

Articles of Agreement for a Partition between Tenants, in Common (a) previous to their making a Deed of Partition‡ of their Eſtates.

‡ See this deed *poſt.* title RELEASE.

N. B. "Settled by the late Mr. HOLLIDAY." *Pow. MSS.*

ARTICLES of Agreement indented, made the —— day of ——, between *M. N.* of, &c.

(a) Some obſervations on the legal nature and operation of the articles of Partition, the ſtudent will find in Elem. Conv. book ii. p. iii. chap. ii. In the mean time I ſhall preſent him with an extract from a very able opinion of a learned Serjeant upon the ſubject of partition between *jointenants*. "As to articles for partition, the principle that whatever is for a valuable conſideration agreed to be done is in equity conſidered as done, if extending to the caſe of jointenants, would certainly prove them to be a ſeverance of jointure, but that is a principle that is ſubject to this limitation, that it is to be conſidered as done only ſo far as concerns the rights of the parties to the agreement, and all claiming under them, but not with reſpect to any other perſons, the rule hath ever been underſtood with that exception; and ſo it was laid down by Sir *Thomas Clarke*, in his celebrated argument, ſtated from Mr. *Fazakerly's* report, in print, (but more accurate in MS.) 1 *Blac. Rep.* 129, where it is thus expreſſed by him commenting on the rule, "Nor will equity conſider things in that light, in "favour of every body, but only of thoſe who had a right to "pray it might be done, the rule is, that it ſhall either go between "the parties who ſtipulate what is to be done, or thoſe who "ſtand in their place." The preſent caſe falls within this limitation or reſtitution of the general principle, and accordingly it hath been ſo taken, and Mr. *Pickering's* reaſoning upon it in the accompanying paper, is right, and the authority of

PARTITION. widow, one of the two daughters and co-heireſſes, of *C. D.* late of, &c. aforeſaid, gentleman, and *M.*

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2 *Vern.* 63, there referred to by him is in point; it is true it is not a deciſion upon the point, and after, he, for that reaſon, changed his opinion. But there had been deciſions in equity on the very point before the caſe, in 2 *Vern.* 63, and though the court, in 2 *Vern.* did not then determine the preciſe point, nor could, becauſe it was not before them, yet upon determining a point upon a ſimilar principle, that is in determining that the woman's free-bench of a copyhold, ſhould not be barred by her huſband's contract to ſell, (though every body knows it would have been barred if a ſurrender had been made purſuant to the contract) the court put the caſe, the ſame as now in queſtion, thus, "If a jointenant agrees to alien, and does it not, but dies, "it would be a ſtrange decree to compel the ſurvivor to per- "form the agreement," which is a caſe ſtanding on the ſame principle, for the woman claims by the cuſtom, and the jointenant by the deed or will, creating the jointenancy, which is paramount to the agreement, and the court there ſpeaks of it as a known eſtabliſhed point in equity, and therefore vouch it as an authority for determining the caſe before the court, and *Roll. Abr.* was publiſhed in 1668, and the decree in 2 *Vern.* 63, was 20 years afterwards, and it appears in *Roll. Abr.* 380 *title Chancery*, (U) *pl.* 2, to have been decreed long before in the court, that an agreement by one of two jointenants who dies, ſhall not in equity bind the ſurvivor, and the court gave this reaſon for it, becauſe the ſurvivor comes in paramount the agreement, which warrants the court in 2 *Vern.* 63, treating it as a ſettled point, and agrees with the opinion of Sir *Thomas Clarke*, that agreements, though entered into for a valuable conſideration for making a conveyance, or doing any other act, are conſidered in equity as only done, either between the parties who ſtipulate what is to be done, or thoſe who ſtand in their place. There are many other caſes in which the ſame thing is mentioned, and ſome in which it hath been decreed ſince 2 *Vern.* In 2 *Atk.* 55, on a queſtion ariſing in a covenant on a marriage ſettlement, conveying only the real eſtate, and wherein what related to the perſonal, depended upon a recital of one of the jointenants of a perſonal eſtate, of an agreement as to the en-

his wife, both deceaſed, of the one part, and *H. A.* of, &c. widow of *H. T.* late of, &c. the other of the two daughters and co-heireſſes of the ſaid *C. D.* and *M.* his wife, of the other part. Whereas the ſaid *M. N.* is entitled to one moiety of a certain meſſuage, lands, hereditaments, and premiſes, at ——, in the county of ——, of the yearly value of ——, or thereabouts, being part freehold and part copyhold, and alſo to certain copyhold meſſuages, lands, hereditaments, and premiſes ſituate at ——, in the county of ——, aforeſaid, of the yearly value of ——, or thereabouts, and the ſaid *H. A.* was entitled to the other moiety thereof, which on her marriage with the ſaid *H. T.* was ſettled in the manner therein mentioned, but ſo as not to hinder or prevent the ſaid *H. T.* and the ſaid *A.* and the ſurvivor of them from making and perfecting a partition of the ſaid hereditaments and premiſes, or any part thereof, with the ſaid *M. N.* And whereas, the ſaid *M. N.* and

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Recital of the ſeiſin of the reſpective parties.

Recital of a for-

joyment of the perſonal eſtate, Lord *Hardwicke* decreed, that there was no ſeverance of the jointenancy; and his reaſons were theſe, 1ſt, There was no agreement by the jointenants for the purpoſe of ſeverance. 2d, If no agreement, there muſt be an actual alienation to make a ſeverance, the declaration of one of the parties is not ſufficient, 2 *Atk.* 55, in the ſame book, 2 *Atk.* 306, the ſame point is decreed, and though the principal point there aroſe on a jointenancy of a copyhold, yet the reaſon given for it is general, and the ſame that Mr. *Pickering* gave, when he was of opinion that the articles entered into between —— the ſon, did not ſever the jointenancy between him and his brother ——, for in 2 *Atk.* 306, Lord *Hardwicke*'s expreſſions, as reported, were theſe, "As to the copyhold it "(the jointenancy) is not ſevered, *for nothing can ſever a legal eſtate, but what will paſs it in law.*"

PARTITION.

former agreement for partition, which was prevented by the death of one of the parties.

H. A. are now entitled to two meſſuages in —— ſtreet, *London*, which have been divided between them, AND whereas, by certain articles of agreement tripartite, bearing date on or about the —— day of ——, and made or mentioned to be made, between *C. N.* widow, the mother of the ſaid *M. N.* and *H. A.* of the firſt part, the ſaid *M. N.* of the ſecond part, and the ſaid *H. T.* and *A.* his wife, and now his widow, of the third part, reciting as therein is recited, and that it would be beneficial to the ſaid parties, to have a partition made between the ſaid *M. N.* and *H. A.* of the ſaid hereditaments and premiſes at —— and ——, aforeſaid, and further as therein is recited, it was thereby witneſſed, covenanted, declared and agreed, that the ſaid *M. N.* and *H. T.* would within 14 days from the date thereof, ſeverally nominate and chooſe one ſkilful indifferent perſon to ſurvey and make an eſtimate of the value of all the ſaid eſtates at —— and ——, and that after ſuch eſtimate ſhould be made, they would ſubmit the alloting and ſettling the equivalent, to be paid or made in money, lands, or houſes, by either of them, to make the eſtate of equal value, to the judgment and determination of *H. T.* and *R. B.* therein named, and that they would ſtand to and abide by ſuch determination, and join in all proper and reaſonable conveyances for conveying and ſettling the ſaid eſtates accordingly, nevertheleſs it was underſtood and agreed by all the ſaid parties, that upon the ſaid partition, the whole eſtate at —— ſhould go to the ſaid *M. N.* and the eſtate at ——, to the ſaid *H. T.* and *A.* his wife, ſave only, by ſuch parts of either, as, upon

PARTITION.

ſettling the ſaid equivalent, might be adjudged by the ſaid *H. T.* and *R. B.* to go and be conveyed to the other of them the ſaid *M. N.* and *H. T.* and *A.* his wife, in lieu of money, to make the partition equal; but, nevertheleſs, as to the eſtates to be ſo allotted to the ſaid *H. T.* and *A.* his wife, the ſame to be according to their reſpective eſtates and intereſts, under or by virtue of their marriage ſettlement. AND whereas the ſaid *M. N.* and *H. T.* duly nominated and appointed *D.* and *D. S.* two indifferent perſons, to ſurvey and value the ſaid eſtates, and which they ſurveyed and valued accordingly, in or about the month of ——, ——, and thereby agreed, that the ſaid hereditaments and premiſes at ——, aforeſaid, were of the value of —, and that the ſaid hereditaments at ——, were of the value of —. AND whereas before the ſaid partition was effectually completed, and the ſaid premiſes conveyed and ſurrendered, the ſaid *C. M. H. T.* and *A. T.* reſpectively died, whereby the ſaid partition could not be perfected under the ſaid in part recited articles, nevertheleſs the ſaid *M. N.* hath ever ſince held and enjoyed the ſaid hereditaments and premiſes in —— aforeſaid, and thereout paid to the ſaid *C. M. H. T.* and *A.* his wife, ſome or one of them, the ſum of ——, the intereſt of the ſum of ——, which, if paid by the ſaid *M. N.* would accordingly to the ſaid valuation, ſo made as aforeſaid, be an equivalent, and make the ſaid hereditaments at ——, aforeſaid, equal in value to the ſaid hereditaments at ——. Now theſe preſents witneſs, that in order to proceed in and perfect the ſaid partition, they the ſaid *M. N.* and *H. A.* do, for themſelves, their heirs, and aſſigns,

Witneſs that the parties covenant, &c. to complete the intended partition.

PARTITION. covenant, promiſe and agree, to and with each other, that they will, and they do hereby reſpectively ſubmit the allotting and ſettling the equivalent to be paid or made in money, lands, or houſes, to make the ſaid hereditaments at — aforeſaid, of equal value, with the hereditaments at —, aforeſaid, to the judgment and determination of *P. I.* of &c. ——, and *P. W.* of &c. ——, and that they will ſtand to and abide by ſuch determination, and join in all proper and reaſonable conveyances and ſurrenders, for conveying, ſurrendering, and ſettling, the ſaid ſeveral meſſuages, lands, and hereditaments, in —— and ——, aforeſaid, accordingly, nevertheleſs, it is underſtood and agreed, by the parties hereto, that upon the ſaid partition, the whole hereditaments and premiſes at ——, are to go to the ſaid *M. N.* and the ſaid hereditaments and premiſes at ——, to the ſaid *H. A.* ſave only ſuch part of the ſaid hereditaments and premiſes at —, as, upon ſettling the ſaid equivalent, may be adjudged by the ſaid *P. I.* and *P. W.* to go and be conveyed or ſurrendered, to or for the uſe of the ſaid *H. A.* and the perſon or perſons claiming or to claim, under the ſaid marriage ſettlement, according to her and their reſpective eſtates and intereſts, under the ſame. And laſtly, it is hereby declared and agreed, by and between the ſaid parties to theſe preſents, that all ſuch conveyances and aſſurances ſhall be made and executed by and between the ſaid parties, and all other neceſſary parties, as by the counſel of the ſaid *M. N.* and *H. A.* ſhall be adviſed, for effecting the ſaid partition, ſo ſoon as conveniently may be after the execution of theſe preſents, and for veſting ſuch

And execute proper aſſurances for that purpoſe.

ſpecific meſſuages, lands, hereditaments, and premiſes, as have been, or ſhall be allotted to the ſaid *M. N.* in the ſaid *M. N.* and her heirs, for an abſolute eſtate of inheritance, and for conveying, ſettling, and aſſuring, ſuch meſſuages, lands, hereditaments, and premiſes, as have been or ſhall be allotted, as and for the ſpecific part or ſhare of the ſaid *H. T.* and *A.* to the ſeveral uſes upon the ſeveral truſts, and to and for the intents and purpoſes, and ſubject to, with, and under the ſeveral powers, proviſos, declarations, and agreements, in and by certain indentures of leaſe and releaſe, bearing date reſpectively the — and — days of ——, —, and made, or mentioned to be made between the ſaid *H. T.* ſince deceaſed, of the firſt part, the ſaid *H. A.* then *C. A.* ſpinſter, of the ſecond part, the ſaid *C. M.* widow of the ſaid *C. D.* of the third part. *H. T.* ſince deceaſed, and *M. J.* of &c. of the fourth part, or to, for, upon, and ſubject to ſuch and ſo many of thoſe uſes, truſts, intents, and purpoſes, as by the death of parties, and other circumſtances, ſhall be then exiſting, or capable of taking effect. In witneſs, &c.

PARTITION.

FORBEARANCE.

Articles of agreement (indorſed on articles ante p. 266.) *that no advantage ſhall be taken, of an omiſſion of part of ſettled premiſes, out of a recovery intended to have been ſuffered of the whole thereof* (a).

Settled by *Mr. Wilbraham, Mr. Booth,* and *Lord Mansfield,* (when ſolicitor general.)

To all to whom theſe preſents ſhall come, the right honourable lord *R.* and the moſt honourable

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(a) In a MS. caſe I have of a gentleman juſtly conſidered to poſſeſs an unuſual portion of legal knowledge; where *A. B.* was tenant in tail, of a manor, part of which was let out on copyhold grant for lives, part on leaſes for 99 years, determinable on lives, at certain ſmall party rents, part let on leaſes for years at will, at ſuch rent, and had a conſiderable common belonging to it, conſiſting in the whole of upwards of *four thouſand acres*, and *A.* ſuffered a common recovery of the ſaid *manor* and *fifteen hundred acres* only of land, meadow and paſture. His opinion was, that the recovery was good for the whole *four thouſand acres*, becauſe the whole being part of the manor, would paſs in a conveyance by the word manor, and would be recoverable by a judgment on a precipe brought for the manor —and he reaſoned thus:

The word manor will paſs the rents.—1 Vez. 172.

1 Vez. 172.

Every manor conſiſts of demeſnes and ſervices, and therefore the word *manor* does of itſelf include both: 1 Pig. of com. rec. 41, diſcuſſing the queſtion whether the reverſion after an eſtate for life, of lands, parcel of the manor, paſſed by a common recovery of the manor, aſſerts firſt, that whatever is part of the manor, whether in poſſeſſion or reverſion paſſes with the manor, ſecondly, that the reverſion of tenants for life, is part of the manor, and paſſes by grant of the manor to the tenant, to the præcipe, and conſequently the recovery of the manor is a good recovery; both points are there clearly proved by many authorities, ibid, &c, and page 50, after which, he obſerves, however, that if the land leaſed for life be not parcel of the manor, then there muſt be a ſurrender of the eſtate for life; but ſince he writ, if ſuch

C. marquis of *R.* parties to the articles of agreement, whereto this deed is annexed, ſend greeting. FORBEARANCE.

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leaſes for life be to tenants reſerving rent, the neceſſity of a ſurrender is taken away by the ſtatute, 14 Geo. 2d. c. 20. ſec. 1. *Pigot* is treating only of leaſes of freehold lands; as to leaſes for life made by copy of court-roll, the caſe is clearer; becauſe the freehold of thoſe copyhold leaſes, though for life, is in the lord, and the copyholds are part of the demeſnes of the manor. 2 *Rol. Rep.* 236, *Cro. Jac.* 559. *Carth.* 428. *Skin.* 192, and leaſes for years, whether of freehold or copyhold, can in no caſe affect the validity of a recovery; as to commons, the ſoil of them is in the lord, and they are parcel of the demeſnes, for as the only two conſiſtent parts of every manor are demeſnes and ſervices, whatſoever is part of a manor muſt of neceſſity be either part of the demeſnes, or of the ſervices, therefore the ſoil and freehold of the common, being part of the manor, muſt be part of the demeſne, but the right of common is part of the copyhold eſtate, and therefore, if the eſtate be enfranchiſed, the common with the manor is extinct, *Salk* 170, at leaſt at law, though if not intended equity might relieve.

There are ſome exceptions to the firſt of the above two points, in *Pig.* 42, but not applicable to grants for life, by copy of court-roll, or to commons in the manor, one in *Co. Lit.* 324, b, though it ſcarces deſerves the name of an exception, but it is taken notice of in *Pigot* 48, which is a diſtinction between a leaſe of land for life, and a leaſe of the manor, excepting land parcel of it, and the reaſon given is, "that a reverſion of part may be parcel of a manor in poſſeſſion, but a part in poſſeſſion cannot be parcel of a reverſion," ibid. another exception is, that of tenant in tail of a manor with a remainder over, making a leaſe by fine, or by deed not warranted by the ſtat. in that caſe, the leſſor continues tenant in tail of the manor, but by the fine the eſtate tail is barred, or by the deed if not warranted by the ſtat. it is diſcontinued, and, in either caſe, he gains a new reverſion by tort which is ſevered from the manor, and therefore cannot paſs by grant, or by a common recovery of the manor, this exception is noticed by *Pig.* page 214. and in page 217, but obſcurely, eſpecially in the laſt page, the caſe there

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WHEREAS by indenture of leaſe and releaſe bearing date reſpectively, the — day of — in the year of our

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reported has been ſince publiſhed in the ſupplement to 11 *Mod.* the material part of that report ſo far as concerns this point, ſeems to be in page 317, and 320. There is a third exception to *Pigot's* firſt point, or rather a diſtinction upon it, which I have not obſerved to have been taken notice of by him, that is, where the manor is only a reputed manor, wanting (as frequently happens,) the laſt of the two before mentioned conſtituent parts of a manor, or where the lands leaſed are only parcel of the manor by reputation, and not really ſo; as to the firſt, where the manor is only a reputed manor, I take the law to be, that it will paſs by the name of a manor, in a common recovery for the reaſon given for it in 2 *Roll. Abr.* 396 (T), notwithſtanding a dubitur is there made of the point, viz. that it is a common aſſurance, for upon that ground, it was adjudged to paſs in the caſe of a fine 6 *Co.* 66. b. and the diſtinction there was taken between *brevia adverſaria*, and *brevia amicabilia*, which diſtinction is equally applicable to a common recovery, as to a fine; but the other part of this exception (in ſome caſes, though not in the preſent) may be more doubtful, viz. whether lands parcel of a manor only in reputation, ſhall be taken to be included in a common recovery of the manor, not ſpecifying the acres, becauſe, though it has been determined that they will, it ſeems to have been principally on this ground; that it appeared by the deed making the tenant to the precipe, that they were intended to paſs, 1 *Sid.* 190, 1 *Vent.* 51, 52, 1 *Levinz.* 27, 28, and whether lands are reputed parcel or not, ſeems to be a fact determinable by a jury, when there is nothing but reputation to the point, but in this caſe, *as far as appears*, the lands not ſpecified are either copyholds or commons, both of which are by the common law, part of the demeſnes of the manor, and therefore, if an iſſue was joined on the point, I think the jury, muſt of courſe, find for the lord, unleſs a grant or preſcription was proved to defeat his common law right, and if there be any ſuch grant or preſcription againſt the lord, it would prevail againſt the uſes declared by him of a common recovery, though they are expreſsly included therein, and therefore the not in-

Lord ——, Sir *B. J.* (then of —— in the county of —— baronet, but ſince deceaſed,) did convey, ſettle, and aſſure the reverſion and inheritance expectant upon the determination of ſeveral precedent uſes and eſtates theretofore created and limited thereof, and which are all ſince determined of and in the ſaid manors of ——, ——, and ——, and of and in divers meſſuages, lands, tenements, and hereditaments, ſituate lying and being in the pariſhes of —— and ——, and other places in the county of ——, therein particularly mentioned, to the uſe of the ſaid *J. L.* eſquire, (who afterwards took upon him the name of ——) for life, with remainder to his firſt, and other ſons ſucceſſively, in tail male, with ſeveral remainders over, all which are ſince determined with the ultimate remainder or reverſion in fee to the ſaid Sir *B. J.* AND whereas the ſaid Sir *J. B.* did, in and by his laſt will and teſtament, bearing date the — day of —, in the year of our Lord ——, give and deviſe, in caſe he died without iſſue male, (among other things,) a certain annual ſum, or yearly rent charge of —, which he had purchaſed of *G. A.* and FORBEARANCE.

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cluding them would be no prejudice; ſo that on the whole, I think it no objection to this title, that they are not included in the recovery; eſpecially if it ſhall appear upon enquiry, that where there are very large waſtes or commons belonging to a manor, the practice is not to inſert in fines or recoveries, as many acres as the waſtes and commons conſiſt of —— And Vide 9. E. 4, 16, 17, feoffment of a manor in Dale, and it extends into Dale et ſale, nothing paſſes but in dale—So of recovery, et vide 19. E. 4, Pl. 9. contra, if of a manor without mentioning the bill.

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which was iſſuing and payable out of the lands and tenements in the pariſh of ——, in the ſaid county of ——, to the ſaid *L. J.* afterwards known by the name of *B. J.* for life, with ſuch and the ſame remainders over as had been limited and declared, of and concerning the ſaid manors, meſſuages, lands, hereditaments and tenements hereinbefore mentioned, to be compriſed in the ſaid indenture of releaſe, of the —— day of ——, —— AND whereas the ſaid *B. J.* the teſtator, ſoon after died, and the ſaid *L. J.* afterwards known by the name of *B. J.* did therefore by virtue of the ſaid limitations and deviſes contained in the ſaid before mentioned indenture of releaſe and will of the ſaid *B. J.* become entitled for his life, to the ſaid manors, lands, and hereditaments, ſo thereby reſpectively conveyed and deviſed as aforeſaid, and he the ſaid *L. J.* then called *B. J.* did accordingly enter into and upon the ſaid premiſes, and was ſeiſed thereof, to hold the ſame for the term of his life with ſuch remainders over as aforeſaid. AND whereas by indenture of leaſe and releaſe, bearing date reſpectively, the 22d and 23d days of ——, in the year of our lord ——, the ſaid *L. J.* by his then name of *B. J.* and *B. T.* his eldeſt ſon, did grant, convey and aſſure the ſaid manors of ——, ——, and ——, and all the meſſuages, lands, tenements, and hereditaments of them the ſaid *B. J.* and *B. T.* or either of them, in the ſaid pariſh of ——, and other places therein mentioned, and all other the meſſuages, lands, tenements, and hereditaments, in the ſaid county of ——, wherein they the ſaid *B. J.* and *T. B.* or either

of them, had any eſtate or inheritance, or freehold, unto and to the uſe of *L. T.* eſquire, and *S. T.* gentleman, therein named, and their heirs, to the end that they might be tenants of the freehold of the ſaid manors, meſſuages, lands, tenements, and hereditaments, in order to the ſuffering ſeveral common recoveries which were thereby declared and agreed, ſhall be and enure to and for the ſeveral particular uſes and eſtates for life, for years, and in tail mentioned, expreſſed and declared, (all which ſaid term of —— years, thereby limited to truſtees for raiſing portions for the younger children of the ſaid *B. J.* are ſince determined) with the ultimate remainder or reverſion in fee thereof, to the right heirs of the ſaid *B. J.* and which ultimate reverſion or remainder afterwards by the death of the ſaid *L. J.* after *B. J.* deſcended upon the ſaid *B. T.* his eldeſt ſon. And whereas a common recovery was accordingly ſuffered in —— term, in the — year of the reign of his late majeſty, king George the —, in the court of common pleas, at Weſtminſter, of the manors of ——, ——, and ——, with the appurtenances, and one hundred and ten meſſuages, three water corn-mills, and wind-mill, — acres of land, — acres of meadow, — acres of paſture, — acres of wood, and common of paſture for all cattle, with the appurtenances in ——, ——, in the county of ——, wherein *K. T.* gent. and *B. T.* gent. was demandants, the ſaid *L. T.* eſquire, and *S. C.* gent. tenants, the ſaid *B. J.* eſquire, vouchee who vouched the ſaid *B. T.* gent. who vouched the then common vouchee of the ſaid court. And

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Whereas divers meſſuages, lands and tenements, ſituate, lying, and being in the ſaid pariſhes of —— and ——, which by the ſaid indenture of the —— day of ——, were limited to the ſaid *B. J.* for life, with ſuch remainders over as aforeſaid, and alſo the ſaid yearly rent charge of —— iſſuing and payable out of the ſaid lands and tenements in —— aforeſaid, which was given and deviſed by the ſaid will of the ſaid *B. J.* in manner as aforeſaid, were by miſtake of the attorney concerned for the ſaid *B. J.* and *B. T.* in ſuffering the ſaid recovery, notwithſtanding the ſame were by particular and general deſcriptions ſufficiently deſcribed and comprehended in the ſaid indentures of leaſe of the —— and —— day of ——,) omitted out of and not compriſed in the record of the ſaid common recovery, or any of the proceedings therein. AND whereas the ſaid Sir *B. J.* left iſſue, *C.* the wife of ſaid *L. H.* eſquire, afterwards Sir *L. H.* baronet, his only child who died in the life time of the ſaid Sir *L. H.* her huſband, leaving *L. T.* eſquire, her eldeſt ſon, who died inteſtate, leaving the aforeſaid *H.* lord ——, his eldeſt ſon, and the ſaid *H.* lord ——, upon the determination of the ſeveral particular uſes and eſtates, limited and created by the aforeſaid indenture of ſettlement of the —— day of ——, and by the will of the ſaid Sir *B. J.* (which happened in the year ——, when *B. J.* eſq. ſecond ſon of the aforeſaid *B. J.* theretofore *J. L.* died without iſſue male,) the ſaid manors, lands, and hereditaments, compriſed in the ſaid ſettlement

of —, and deviſed by the will of the ſaid Sir *B. J.* would by deſcent have fallen and belonged in poſſeſſion to the ſaid *H.* lord — as grandſon and heir of the ſaid Sir *B. J.* in manner aforeſaid, if no recovery had been ſuffered thereof. AND the ſaid *H.* lord — is entitled to take advantage, (if any can be taken) of the ſaid error or miſpriſion which has happened with reſpect to the ſaid omiſſion of the ſaid lands and hereditaments in —— and ——, and of the ſaid annual ſum or yearly rent of ——, but the ſaid *H.* lord — being ſatisfied that the record of the ſaid common recovery is amendable, is contented that no advantage ſhall be taken of the ſaid error or omiſſion, and is deſirous that the ſaid common recovery, and the proceedings therein ſhould be amended, and the ſaid meſſuages, lands, tenements, and rent in the mean time, and from time to time, and at all times hereafter, be, continue and remain to ſuch uſes, upon ſuch truſts, and ſubject to ſuch powers as are mentioned, expreſſed, and declared of and concerning the ſame, in the aforeſaid indenture of the — day of ——, or to ſuch of them as are now ſubſiſting, or capable of taking effect, to the end that the ſaid error, miſpriſion and omiſſion may not prejudice the performance of all or any covenants, agreements, and proviſos, in the within articles of agreement contained, ſo far as the ſame in anywiſe relate to, or concern the real eſtates, late of the ſaid *B. T.* or the monies to ariſe by ſale thereof. Now therefore know ye, that the ſaid *H.* lord —— doth hereby for himſelf and his heirs, declare and agree to and with the ſaid *C.* marquis of ——, his heirs,

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Witneſs that record of recovery ſhall be amended.

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executors, adminiſtrators, and aſſigns, that he the ſaid *H.* lord —— and his heirs ſhall and will at any time or times hereafter, upon the requeſt and at the coſts and charges of the ſaid *C.* marquis of ——, his heirs, executors, adminiſtrators and aſſigns, or any other perſon or perſons, claiming or to claim, by, from, or under the aforeſaid *B. I.* the father, and *B. F.* or either of them, do, or conſent to the doing of all ſuch acts, matters and things, as by the ſaid *C.* marquis of ——, his heirs, executors, adminiſtrators, or aſſigns, or ſuch perſon or perſons as aforeſaid, or any of them, or his, their, or any of their council, ſhall be deviſed or adviſed, and required for amending the record of the ſaid common recovery, the exemplification thereof, the writ of entry, and all other entries and proceedings relating to the ſaid recovery, by inſerting in the ſaid record, exemplification, writ of entry, and proceedings after the word (————) the following words, viz. (——) (——), and alſo by inſerting therein after the words (*manerio de H. cum Pentin.*) the words following, viz. (*Acetiam vignit Liber annuatim examen de terris et tenamentis in* ——.) AND that in the mean time, until the ſaid record of the ſaid common recovery, the exemplification thereof, and the writ of entry, and ſeveral proceedings thereon, ſhall be ſo amended as aforeſaid, and from time to time, and at all times hereafter, all and every the ſaid meſſuages, lands and tenements, in ——, and —— aforeſaid, and alſo the yearly rent of —, iſſuing out of the lands and tenements in —— ſhall be continued and remain to ſuch of the uſes upon

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ſuch of the truſts, and ſubject to ſuch of the powers mentioned, expreſſed and declared, of and concerning the ſame, in and by the aforeaforeſaid indenture of the — day of ——, ——, as are now ſubſiſting, or capable of taking effect, to the end that all and every the covenants, agreements, and proviſos, in the within written articles of agreements, contained ſo far as the ſame any ways relate to or concern the real eſtates, late of the ſaid *B. T.* or the money to ariſe by ſale thereof, may be duly executed and performed, according to the true intent and meaning thereof, without any moleſtation, interruption, or diſturbance, of, from, or by the ſaid *H.* lord — his heirs or aſſigns, or any perſon or perſons claiming or to claim by, from, or under him, them, or any of them, in ſuch manner, to all intents and purpoſes, as if the ſaid meſſuages, lands, and tenements, in —— and ——, and the ſaid yearly rent of — had been compriſed in the ſaid common recovery, and ſeveral proceedings therein. In witneſs, &c.

Articles of Agreement for a Licence from a Patentee to ſell certain Patent Commodities.

ARTICLES of agreement had, made, concluded, and agreed upon, &c. this — day of ——, in the — year, &c. and in the year of our Lord ——, Between *A. B.* of the one part, and *C. D.* of the other part. WHEREAS his moſt ſacred majeſty, king *George* III. by his letters patent, bearing date,

LICENCE. &c. [reciting letters patent, &c. and ſpecification.] AND whereas the ſaid *A. B.* hath agreed with the ſaid *C. D.* to grant a licenſe to him, his executors, adminiſtrators, and aſſigns, to make and vend for exportation, or otherwiſe, new invented backs to be affixed to ſtoves or grates, or in chimney or fire-places, or otherwiſe, purſuant to the ſpecification of the ſaid recited letters of the ſaid ——, during the continuance of ſuch patent, or any renewal thereof, and not to make, or vend, or licence any other perſon to make or vend any ſuch new invented ——, within — miles of the city of ——, unleſs purchaſed of the ſaid *C. D.* in conſideration of the ſaid *C. D.*'s paying to the ſaid *A. B.* the ſum of — for every Bath ſtove, —— for every regiſter and ſtanding or moving ſteel ſtove-grate ——, for every kitchen range, in manner, and under, and ſubject to the proviſos, conditions, and agreements, hereinafter mentioned and expreſſed. Now witneſs theſe preſents, that in purſuance of ſuch agreements as aforeſaid, and for and in conſideration of the covenants and agreements hereinafter entered into, on the part and behalf of the ſaid *C. D.* and in conſideration of —, &c. he the ſaid *A. B.* hath given and granted, and by theſe preſents doth give and grant unto the ſaid *C. D.*'s executors, &c. from time to time, and at all times for and during all the reſt, reſidue, and remainder of the ſaid term of 14 years, by the ſaid letters patent, granted and yet to come, and unexpired, and alſo for and during all ſuch future term or terms, as ſhall or may be at any time or times hereafter granted therein, by way of any new

patent or renewal of the now ſubſiſting patent, or otherwiſe, full and free liberty, licenſe, power, and authority, to make, vend, or ſell, either wholeſale or retail, in any part of that part of *Great Britain*, called *England*, the dominion of *Wales*, and town of *Berwick-on-Tweed*, either for exportation or otherwiſe, the ſaid new invented backs to be affixed to ſtoves or grates, or in chimnies or fire-places, or otherwiſe, for which the ſaid *A. B.* hath obtained the ſaid recited letters patent, as aforeſaid, and in the ſaid recited ſpecification particularly mentioned and ſpecified, and to take, receive, to and for their own uſe and benefit, all profits and advantages which ſhall or can be made, of or by the ſaid new invented double backs, in any part of the kingdom of *England*, &c. or elſewhere, and that without any let, ſuit, trouble, detriment, &c. of, from, or by him the ſaid *A. B.* his executors, &c. or any other perſon or perſons claiming to hold and uſe ſuch invention as aforeſaid, from, by, under, or in truſt for him or them, by virtue of the ſaid letters patent, or otherwiſe, and that in as full and ample manner, to all intents and purpoſes, whatſoever, and by and with the ſame licenſe, power, and authority, and with the ſame privileges as he the ſaid *A. B.* his executors, &c. might or could have held and enjoyed the ſame, had theſe preſents not been executed. AND the ſaid *A. B.* for himſelf, his heirs, &c. doth hereby covenant, promiſe, and agree, to and with the ſaid *C. D.* his executors, &c. that he the ſaid *A. B.* his executors, &c. ſhall not, nor will at any time or times during

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LICENCE. the reſidue and remainder of the ſaid term of 14 years, by the ſaid letters patent granted, yet to come and unexpired, or any future term or terms of years, which ſhall or may be at any time or times hereafter granted therein, by way of any new patent, or renewal of the now ſubſiſting patent, or otherwiſe, make, vend, or grant any licenſe, to any other perſon or perſons, to make or vend the ſaid invented backs to be affixed to ſtoves, or grates, or in chimney or fire-places, or otherwiſe mentioned and ſpecified in the ſpecification of the ſaid in part recited letters patent, within the ſpace of — of the ſaid city of London, without the ſpecial licenſe and conſent of the ſaid *C. D.* his executors, &c. in writing, under their hands firſt had and obtained, and unleſs the ſame be purchaſed of the ſaid *C. D.* his executors, &c. AND the ſaid *C. D.* for the conſiderations aforeſaid, and in conſideration of ſuch licenſe ſo granted to him as aforeſaid, for himſelf, his heirs, &c. doth covenant promiſe, and agree, to and with the ſaid *A. B.* his executors, &c. that he the ſaid *C. D.* his executors, &c. ſhall and will well and truly pay, or cauſe to be paid, unto the ſaid *A. B.* his executors, &c. for every ſuch new-invented patent back, that they ſhall ſo vend or ſell, the following ſums, viz. for every ſuch patent back to any Bath-ſtove-grate they ſhall ſo vend or ſell, the ſum of — for every ſuch patent back to any Regiſter, and ſtanding or moving, ſteel, braſs, or other ſtove grate, upon the conſtruction and agreeable to the ſaid invention, the ſum of —; and for every ſuch patent back to any kitchen range, or to any chimney or fire-place, or other place made

upon such construction, and agreeable to such intention as aforesaid, the sum of —. PROVIDED always, and it is hereby agreed and declared, that in case any person or persons shall make any infringement on the said letters patent granted to him the said *A. B.* as aforesaid, and the said *C. D.*'s executors, &c. shall be desirous to prosecute such person or persons, then, and in such case, it is hereby agreed and declared, &c. AND the said *A. B.* for himself, his heirs, &c. doth hereby covenant, &c. to and with the said *C. D.*'s executors, &c. that it shall and may be lawful to and for the said *C. D.*'s executors, &c. to commence, bring, sue, and prosecute all such action or actions, suit or suits, that shall or may be judged, or that is necessary or expedient to be commenced and prosecuted against such person or persons who shall make any infringement on the said letters patent, or the said license, power, and authority, thereby given and granted as aforesaid, for which purpose the said *A. B.* doth hereby constitute and appoint the said *C. D.*'s executors, &c. his true and lawful attornies, irrevocable, and doth give and grant to them, their executors, &c. full power and authority, in his name, or in the name of his executors, &c. but to the use and behoof of the said *A. B.* and *C. D.* their executors, &c. in such proportions and manner as the costs and charges of such suits and actions as are hereinafter directed to be paid, to commence, bring, sue, and prosecute, any action or actions, suit or suits, against any person or persons who shall make any infringement on the said letters patent, or the license, power,

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or authority, thereby given and granted as aforesaid, and to make, do, and perform, and execute, all such further and other acts, matters, deeds, and things, in and about, touching, or concerning the same actions or suits, as to the said *C. D.*'s executors, &c. shall seem requisite and necessary, and that as fully and effectually as the said *A. B.*'s executors, &c. might or could do, if personally present, he the said *A. B.* hereby covenanting, that he, his executors, &c. shall and will ratify and confirm all and whatsoever the said *C. D.*'s executors, &c. shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents. And it is hereby agreed and declared, by and between the said parties to these presents, and the said *A. B.* for himself, his heirs, &c. and the said *C. D.* for himself, his heirs, &c. do and each of them doth mutually covenant, promise, and agree, with the other and others of them respectively, that all such sum and sums of money, costs, charges, and expences, as shall at any time hereafter be laid out, disbursed, given, or expended, by the said *C. D.*'s executors, &c. in, about, touching, or concerning, the suing, prosecuting, or defending, of any such action or actions, suit or suits, so brought or commenced, or to be brought or commenced by the said *C. D.* his executors, &c. in the name of the said *A. B.* his executors, &c. or otherwise against such person or persons so making any such infringement on the said in part recited letters patent, or the license, power, and authority, thereby granted, or any thing in any wise relating thereto, shall be borne and equally paid by them the said

A. B. and *C. D.* in manner following, viz. one moiety or equal part to ſuch coſts, charges, and expences, by the ſaid *A. B.* his executors, &c. and the other moiety of ſuch coſts, charges, and expences, by the ſaid *C. D.* his executors, &c. LEASE.

**Articles of Agreement for a Leaſe, by a Brewer to a Publican, with many ſpecial Proviſos.*

ARTICLES of Agreement, had, made, concluded, and agreed upon, this —— day of ——, Between *G. J.* of ——, in the county of ——, brewer, of the one part, and *G. I.* of ——, in the ſaid county, publican and victualler, of the other part, as follows, (that is to ſay,) Whereas the ſaid *G. J.* is ſeiſed and poſſeſſed in his own right of and in the meſſuage or tenement and public-houſe hereinafter mentioned: And whereas the ſaid *G. I.* hath requeſted the ſaid *G. J.* to let to him the ſaid meſſuage, tenement, or public-houſe, which the ſaid *G. J.* hath conſented and agreed to do, for the term, and under and ſubject to the rent, covenants, Proviſos, conſiderations, and agreements, hereinafter particularly mentioned, expreſſed and declared of and concerning the ſame: Now therefore theſe preſents witneſs, that the ſaid *G. J.* for and in conſideration of the rent, covenants, conditions, proviſos, and agreements hereinafter contained, on the part and behalf of the ſaid *G. I.* his heirs, executors, and adminiſtrators, to be paid, done, obſerved and performed, doth hereby agree to Witneſs.

LEASE. let unto the ſaid *G. I.* his executors and adminiſtrators, all that meſſuage, tenement, and public-houſe, ſituated &c. commonly called or known by the name of ——, with the out-houſes and appurtenances thereto belonging, to hold the ſaid meſſuage, tenement, or public-houſe, out-houſes and appurtenances, unto the ſaid *G. I.* his executors, and adminiſtrators for the ſpace or term of ſix calendar months, from the —— day of —— laſt paſt thence next enſuing, and fully to be complete and ended, and after the expiration of the ſaid term of ſix months (without ſuch notice to quit having been given by either of the ſaid parties as hereinafter mentioned,) then for ſuch further time and term as ſhall elapſe until either of the ſaid parties ſhall have given to the other three months notice in writing, for the quitting and delivering up of the ſaid meſſuage, or public-houſe and premiſes, by and on the part of the ſaid *G. J.* his executors or adminiſtrators, and ſuch notice ſhall have expired, yielding and paying to the ſaid *G. J.* his heirs or aſſigns, the rent or ſum of — of good and lawful money of *Great Britain*, for the ſaid term of ſix months, by two even and equal portions, on the — day of —, and the — day of — now next enſuing, and after the expiration of the ſaid term of ſix months (without 3 months notice to quit having been given by either of the ſaid parties as aforeſaid, &c.) then for ſuch further and other term and time, as the ſaid *G. J.* his executors and adminiſtrators, ſhall lawfully continue in poſſeſſion, and be tenant of the ſaid meſſuage and premiſes, under and by virtue of theſe pre-

ſents, at and after the rate of ——, of like good and lawful money of *Great Britain*, for every three months or quarter of a year, which he or they ſhall ſo continue in poſſeſſion, and be tenant of the ſaid premiſes, the ſame to be payable and paid on the — day of —, and the — day of —, in every year, (ſhould the ſaid tenancy continue for one or more year or years,) or on ſuch other days, or at ſuch other times as the current three months or quarter of a year ſhall or may at any time happen to expire or determine, under or by virtue of theſe preſents; the firſt payment of the ſaid rent hereby reſerved to begin and be made on the — day of — next enſuing the date hereof. And the ſaid *G. I.* doth hereby for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid *G. J.* his heirs, executors, adminiſtrators and aſſigns, in manner following, (that is to ſay,) That he the ſaid *G. I.* his executors or adminiſtrators, ſhall and will from time to time, during the ſaid term of ſix months, and during his and their further continuance (if any) in the poſſeſſion of the ſaid premiſes as tenant thereof, under and by virtue of theſe preſents, well and truly pay, or cauſe to be paid unto the ſaid *G. J.* his heirs or aſſigns, the ſaid rent or ſum of ——, for the ſaid term of ſix months, and from and after the expiration thereof, the ſum of —— as aforeſaid, on the days and times hereinbefore appointed for payment of the ſame. And alſo, ſhall and will at all times during the ſaid term, and during his and their future continuance in the poſſeſſion of the ſaid premiſes as tenant thereof,

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under and by virtue of theſe preſents, well and truly pay and diſcharge all parliamentary, parochial, and other taxes, charges, rates, dues, duties, impoſitions, and aſſeſſments whatever, payable for or in reſpect of the ſaid premiſes, and that whether ſuch taxes, charges, rates, duties, or impoſition, be now ſubſiſting or ſhall be hereafter impoſed or become payable. And alſo repair the glaſs and frames of the windows of or belonging to the ſaid premiſes, or any of them, which may at any time be damaged or broken. And alſo ſhall and will, from time to time, and at all times during the ſaid term, and during any his or their further continuance in the poſſeſſion of the ſaid premiſes as tenant thereof, under and by virtue of theſe preſents, buy, purchaſe, and receive, of and from the ſaid *G. J.* his executors, adminiſtrators, or aſſigns, or of ſuch other perſon or perſons as he or they ſhall, in writing, under his or their hand or hands, direct or appoint, and of and from no other perſon or perſons whomſoever. All and every the beer, ale, porter, twopenny, and other malt liquors, Britiſh and foreign ſpirituous liquors, and liquors called ſpirituous compounds, wine, cider, perry, capillaire, and other liquors, ſpirits, drinks, and cordials, of every ſort, kind, and deſcription whatſoever, as ſhall be uſed, retailed, conſumed, expended, ſold, or diſpoſed of, in, upon, or about, or which ſhall be ſold out of, or ſent from the ſaid public-houſe, or any part of the ſaid premiſes hereby letten, during the ſaid term of ſix months, or during any further continuance of the ſaid *G. J.* in the poſſeſſion of the ſame as tenant thereof, un-

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der and by virtue of theſe preſents. And ſhall not nor will on any account or pretence whatſoever, either directly or indirectly diſpoſe of, ſell, or permit, or ſuffer to be ſold or diſpoſed of, in or upon the ſaid premiſes hereby letten, or any part thereof, or taken in or received by any perſon or perſons whomſoever, for ſale, or for his or their uſe, or on his or their credit or account, any beer, ale, porter, twopenny, or other malt liquors, Britiſh or foreign ſpirituous liquors, ſpirituous compounds, wine, cider, perry, capillaire, or other ſpirits, liquors, drink, or cordials, of any ſort, kind, or deſcription whatſoever, ſave only and except ſuch as the ſaid *G. I.* his executors, or adminiſtrators, ſhall from time to time actually buy and receive of and upon the ſaid *G. J.* his heirs, executors, adminiſtrators, or aſſigns, his or their nominee or nominees. And ſhall not nor will quit or aſſign, transfer, or make over, or deliver up the ſaid public-houſe, premiſes, or appurtenances, or any part or parcel thereof, either during his their, or any, or either of their tenancy, under theſe preſents, or at or upon the expiration thereof, to any perſon or perſons whomſoever, except unto him the ſaid *G. J.* his heirs, executors, adminiſtrators, or aſſigns. And alſo, that he the ſaid *G. J.* his executors, and adminiſtrators, ſhall and will at all times during the ſaid term, and during any the further continuance of him and them, the ſaid *G. I.* his executors and adminiſtrators, in the poſſeſſion of the ſaid public-houſe and premiſes, as tenant thereof, under and by virtue of theſe preſents, now kept open, and occupy the ſame as and

LEASE. for a public victualling-houſe and ale-houſe, for retailing beer, wines, ſpirituous and other liquors, therein, and by every proper means in his and their power, do his and their utmoſt endeavours, and uſe his and their greateſt care and diligence to carry on, promote, and extend the trade and buſineſs thereof: And ſhall not, nor will do or ſuffer or knowingly or willingly cauſe to be done or ſuffered, any act of a contrary tendancy, and more eſpecially any act or thing which may endanger the licence of him the ſaid *G. I.* his executors or adminiſtrators, to be taken away or diſcontinued. AND alſo ſhall not, nor will not make any alterations, additions, or improvements, to the ſaid meſſuages and premiſes, without conſent in writing, of the ſaid *G. J.* his heirs, executors, adminiſtrators, or aſſigns, for that purpoſe firſt had and obtained. And the ſaid *G. J.* for himſelf, his heirs, executors, and adminiſtrators, doth hereby covenant, promiſe, and agree, to and with the ſaid *G. I.* his executors and adminiſtrators in manner following, (that is to ſay,) That he the ſaid *G. J.* his executors, adminiſtrators, or aſſigns, ſhall and will during the ſaid term of ſix months, and during ſuch further time, if any, as the ſaid *G. I.* his executors or adminiſtrators, ſhall continue tenant of the ſaid premiſes, under and by virtue of theſe preſents. And according to the true intent and mean hereof, ſave, find, and provide, and ſend in and deliver, on the ſaid premiſes, to and for him the ſaid *G. I.* his executors and adminiſtrators, good and marketable beer, ale, porter, and other malt liquors, Britiſh or foreign

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ſpirituous liquors, ſpirituous compounds, wine, cider, perry, and capillaire, of every ſort, kind, and deſcription whatſoever, now uſually ſold by him the ſaid *G. J.* or hereafter to be ſold by him, his executors, adminiſtrators, or aſſigns, as he the ſaid *G. I.* his executors or adminiſtrators may have occaſion to uſe, vend, conſume, or diſpoſe of, in, upon, about, or out of the ſaid public-houſe and premiſes, at ſuch price and prices, and of ſuch qualities and deſcription, as the ſaid *G. J.* his executors, adminiſtrators or aſſigns, ſhall or may for the time being, deliver or ſell to the reſt of his or their cuſtomers, and that within ſeven days after demand received by him or them for the ſame. AND alſo ſhall and will remove and exchange ſuch of the ſaid goods, liquors, or ſpirits, which may be ſo delivered, as ſhall or may from time to time prove unfit for ſale, on having proper, ſufficient, and timely notice thereof. AND alſo, that he the ſaid *G. J.* his heirs, executors, adminiſtrators, or aſſigns, ſhall and will during the ſaid term of ſix months, and during any further continuance of the ſaid *G. I.* his executors or adminiſtrators, in poſſeſſion of the ſaid premiſes as tenant thereof, under and by virtue of theſe preſents, keep in good and tenantable repair, the ſaid public-houſe and premiſes with their appurtenances, except the glaſs and frames of the windows thereof. PROVIDED always, and it is hereby declared and agreed, by and between the ſaid parties hereto, to be their true intent and meaning, that notwithſtanding any thing hereinbefore contained to the contrary thereof, the ſaid *G. J.* his heirs,

LEASE. executors, adminiſtrators, or aſſigns, ſhall not be bound or compellable by any covenant, clauſe, proviſo, agreement, or any thing herein contained, to find and provide the ſaid *G. I.* his executors, or adminiſtrators, with any beer, ale, porter, two-penny, or other malt liquors, foreign or Britiſh ſpirituous liquors, ſpirituous compounds, wine, cyder, perry, capillaire, or other liquor, ſpirit, drink, or cordial whatſoever, whenever the ſaid *G. I.* his executors or adminiſtrators ſhall have contracted a book-debt with the ſaid *G. J.* his executors, adminiſtrators, or aſſigns, to the amount of ——, until ſuch debt of —— ſhall be fully paid off and diſcharged, but nevertheleſs the ſaid *G. I.* his executors or adminiſtrators ſhall not, on ſuch pretence, or on any other, be at liberty to procure ſuch or any liquors, ſpirits, cordials, or compounds, from any other perſon or perſons than the ſaid *G. J.* his executors, adminiſtrators, or aſſigns. PROVIDED alſo, and it is hereby further agreed between the ſaid parties hereto, that on default of three months notice in writing, being given, either by the ſaid *G. J.* his heirs, executors, adminiſtrators, or aſſigns, or by the ſaid *G. I.* his executors and adminiſtrators, of and for the quitting or delivering up of the ſaid public-houſe and premiſes, by and on the part of the ſaid *G. I.* his executors and adminiſtrators, at the end and expiration of the ſaid term of ſix months, hereby granted thereof, that then, and in that caſe, but in no other, the ſaid tenancy ſhall be renewed, and the period thereof extended, and the ſame is hereby in ſuch caſe extended for and during the term or time of one quarter of a year, to commence

upon and be computed from the end and determination of ſaid term of ſix months hereby granted, and ſo on from one quarter of a year to another quarter of a year, and no longer, until ſuch notice as aforeſaid ſhall be given by one or other of the ſaid parties, his or their, or ſome or one of his or their heirs, executors, adminiſtrators, or aſſigns, according to the intent and meaning of theſe preſents. Such further holding, being nevertheleſs at and after the rent hereinbefore reſerved, and under, ſubject, and liable to the ſeveral covenants, conditions, proviſos, reſervations, and agreements, in theſe preſents particularly mentioned, expreſſed, and ſet forth. And from and immediately after the expiration of any ſuch notice when given, the tenancy of the ſaid *G. I.* his executors and adminiſtrators, of and in the ſaid premiſes hereby letten, ſhall ceaſe and determine to all intents and purpoſes whatſoever. PROVIDED alſo, and it is hereby further concluded, declared and agreed, upon, by, and between the ſaid parties hereto, that if at any time hereafter, during the continuance of the ſaid *G. I.* his executors or adminiſtrators, in the lawful poſſeſſion and tenancy of the ſaid meſſuage or public-houſe and premiſes, under and by virtue of theſe preſents, any licence or licences, for retailing ale, beer, ſpirituous or other liquors, and wines therein, ſhall by his Majeſty's juſtices of the peace, or other perſons having or executing lawful authority therein, be refuſed to be granted to the ſaid *G. I.* his executors or adminiſtrators, or he or they ſhall or do not in all things well and truly obſerve, perform, fulfil, and keep all

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LEASE. and ſingular the covenants, clauſes, articles, and agreements herein contained, which on the part and behalf of the ſaid *G. I.* his executors and adminiſtrators are or ought to be obſerved, performed, fulfilled and kept, and that in all reſpects, according to the true intent and meaning of theſe preſents, then and from thenceforth, and in any or either of the ſaid caſes, and whenever the ſame ſhall happen, and from and immediately after the happening thereof, the term and tenancy hereby made and created, ſhall immediately thereupon ceaſe and determine, to all intents and purpoſes whatſoever, beſides the ſaid *G. I.* his executors and adminiſtrators being liable to the penalty hereinafter mentioned, and thereupon alſo it ſhall accordingly be lawful to and for the ſaid *G. J.* his heirs, executors, adminiſtrators, or aſſigns, into and upon the ſaid premiſes hereby letten, or any part thereof, in the name of the whole, wholly to reenter, and from thenceforth the ſaid *G. I.* his executors and adminiſtrators, to expel, remove, and put out, and the ſame premiſes to have again, retain, re-poſſeſs, and enjoy, as in his and their firſt and former eſtate, any thing hereinbefore contained to the contrary thereof in anywiſe notwithſtanding. PROVIDED alſo* and it is hereby further agreed,

* This proviſo ſeems proper, under the poſſibility that the tenant may incur a book-debt with the landlord, to the extent allowed by the agreement, and that the premiſes may afterwards be conſumed by fire, in which caſe the inſurance will create a fund, out of which the debt may be ſatisfied, when there might otherwiſe perhaps be none.

by and between the ſaid parties to theſe preſents, and the ſaid *G. I.* doth hereby, for himſelf, his heirs, executors, and adminiſtrators, covenant, declare, and promiſe, to and with the ſaid *G. J.* his heirs, executors, adminiſtrators, and aſſigns, that he the ſaid *G. I.* his executors or adminiſtrators, ſhall and will, at his and their own proper coſts and charges, from time to time, during the continuance of his or their poſſeſſion of the ſaid meſſuage and premiſes, under or by virtue of theſe preſents, cauſe to be well and effectually inſured in ſome reputable and ſubſtantial office for inſuring goods and effects from caſualties by fire, held or ſituated in or within — miles of the town of ——, the full ſum of —— of lawful Britiſh money, upon the beer, liquors, goods, property, and effects, of him the ſaid *G. I.* his executors or adminiſtrators, which ſhall or may be, at any time or times, in, about, or upon any part of the premiſes hereby demiſed, or letten, or ſo agreed to be as aforeſaid, and ſhall and will keep and continue the ſame ſo inſured, without interval or default, during the whole of the period or time aforeſaid, and in caſe the ſaid *G. I.* his executors or adminiſtrators, ſhall at any time neglect to take out or procure a policy or contract of inſurance, for the above mentioned purpoſe, and in the above mentioned ſum, or ſhall neglect to pay the premium or premiums, duty or duties, or other ſum or ſums of money payable thereon, or in reſpect thereof, at or upon the days or times when the ſame ought to be paid, or ſhall become payable, then, and in either of the ſaid

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LEASE. caſes, it ſhall and may be lawful for the ſaid *G. J.* his executors, adminiſtrators, or aſſigns, and the the ſaid *G. I.* doth hereby accordingly authoriſe and empower him and them to take out ſuch policy, and to pay ſuch premiums, duties, and monies, or any or either of them, for and in the name of him the ſaid *G. J.* his executors or adminiſtrators, and ſo from time to time, as often as the ſame ſhall happen; and the money and monies ſo paid ſhall be a debt due to the ſaid *G. J.* his executors, adminiſtrators, and aſſigns, and be by him and them recoverable in like manner as other debts are by law recoverable. AND for the true performance of all and every the covenants, proviſos, clauſes, and agreements, herein contained, on the part and behalf of the ſaid *G. I.* his executors and adminiſtrators, to be paid, done, obſerved, and performed, he the ſaid *G. I.* doth hereby bind himſelf, his heirs, executors, and adminiſtrators, unto the ſaid *G. J.* his heirs, executors, adminiſtrators, and aſſigns, in the ſum of ——, of good and lawful money of *Great Britain*, as and by way of ſpecial and liquidated damages now by theſe preſents, mutually aſſeſſed and agreed upon by and between the ſaid parties, to be paid by the ſaid *G. I.* his executors and adminiſtrators, to the ſaid *G. J.* his heirs, executors, adminiſtrators, and aſſigns, on the non-performance or other non-obſervance of any clauſe, performance, or thing, in theſe preſents contained, and to be recovered by him the ſaid *G. J.* his heirs, executors, adminiſtrators, and aſſigns, in any of his majeſty's courts of law, at *Weſtminſter*, together with coſts

of ſuit, as between attorney and client. AND the ſaid *G. I.* for himſelf, his heirs, executors, and adminiſtrators, doth hereby covenant, declare, and agree, that neither he, or they, or any or either of them, ſhall not, nor will move an arreſt of judgment to any ſuch action for recovering the ſaid ſum, or any part thereof, or bring any writ or writs of error for removing, ſetting aſide, or impeding the whole thereof, in any manner howſoever. AND laſtly, it is hereby further mutually declared, concluded, and agreed upon, by and between the ſaid parties hereto, that if the ſaid *G. J.* his executors or adminiſtrators, ſhall, at any time or times hereafter, during his or their continuance in the poſſeſſion of the ſaid meſſuage or public-houſe, and premiſes hereby letten, under and by virtue of theſe preſents, have in his poſſeſſion any beer, ale, porter, twopenny, or other malt liquors, foreign or Britiſh ſpirituous liquors, ſpirituous compounds, wine, cider, perry, capillaire, or other liquor, ſpirits, or cordial, of any ſort or deſcription whatſoever, in or about any part of the ſaid premiſes, other than what ſhall have been had and received from the ſaid *G. J.* his executors, adminiſtrators, or aſſigns, ſuch poſſeſſion of the ſame ſhall, ipſo facto, be deemed concluſive evidence, to all intents and purpoſes whatſoever, of the ſaid *G. I.* his executors and adminiſtrators, having bought, purchaſed, and received the liquors ſo in his poſſeſſion, as aforeſaid, of and from ſome other perſon or perſons than the ſaid *G. J.* his executors, adminiſtrators, or aſſigns. AND the ſaid *G. I.* his executors and

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INCLOSURE. adminiſtrators, ſhall thereupon incur the forfeiture of the ſum of ——, hereinbefore agreed to be paid by him as a ſatisfaction in damages for the non-performance of any of the covenants, clauſes, or agreements, in theſe preſents contained. And the tenancy of the ſaid *G. I.* his executors and adminiſtrators, of and in the ſaid premiſes, ſhall thereupon alſo immediately ceaſe, as hereinbefore expreſſed and agreed, on the non-performance by the ſaid *G. I.* his executors or adminiſtrators, of any clauſe, matter, or thing, herein contained, any thing hereinbefore contained to the contrary thereof, in anywiſe notwithſtanding. In witneſs, &c.

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* *Articles of Agreement between the lord of a Manor and the Freeholders and Copyholders of the ſame Manor, for applying to Parliament for an Act to incloſe Common and waſte Lands.*

ARTICLES OF AGREEMENT made &c. the —— day of ——, by and between —— and Sir *W. W.* lord of the manor and ſoil within townſhip or hamlet of —— in the pariſh of —— and county of —— and impropriator of the tithes within the ſaid townſhip, and by *J. W. W. D. S. W.* and the ſeveral other freeholders and copyholders within the townſhip or hamlet of —— aforeſaid, and perſons whoſe names are hereunto ſubſcribed, as aſſenting thereto, intereſted in the commons and waſte grounds, with the ſaid townſhip or hamlet for and reſpecting the incloſure and improvement thereof,

as follows, (that is to ſay,) WHEREAS [*recital of the advantages which are expected to ariſe from an incloſure of the ſaid lands.*] Now theſe preſents witneſs, that it is hereby mutually and reciprocally covenanted, concluded and agreed upon, by and between the ſeveral parties and perſons above mentioned, as well for themſelves ſeverally and reſpectively, as for their ſeveral and reſpective heirs, executors, adminiſtrators and aſſigns, that an application ſhall be made to Parliament, in the next enſuing ſeſſion or as ſoon thereafter as may be, for an act to appoint and empower, certain perſons as commiſſioners to incloſe, divide and allot the ſaid commons and waſte lands, to and among the ſeveral perſons intereſted therein, in the proportions and in the manner hereinafter mentioned, viz. That the commiſſioners ſhall in the firſt place, firſt ſet out and appoint in ſuch place or places as they ſhall think convenient and proper, ſuch parcels of the ſaid commons and waſte grounds, not exceeding in the whole — acres, for the purpoſe of furniſhing gravel ſtone and ſand, for the uſe and benefit of the ſeveral perſons intereſted in the ſaid commons and waſte lands, for the repair of the ſeveral roads and highways within the ſaid townſhip or hamlet, and for ſuch other purpoſes, and in ſuch manner and form as the ſaid commiſſioners ſhall by their award hereinafter mentioned, direct, and that then the commiſſioners ſhall in the next place mark and ſet out all proper public or private roads over or acroſs the ſaid commons, and waſte lands, of ſuch breadth and in ſuch directions as to them ſhall ſeem moſt proper. AND further, that

INCLOSURE.

Part of the commons to be appropriate for ſupplying gravel, &c. for the reparation of the roads.

Proper roads to be ſet out.

A certain por-

INCLOSURE.

then and thereafter, one full — part of the reſidue, and remainder of the ſaid commons and waſte lands ſhall be allotted by the ſaid commiſſioners to the ſaid Sir *W. W.* for his ſhare thereof, as lord of the ſoil and royalty of the ſaid townſhip of —— over and beſides what the ſaid commiſſioners ſhall allot to him in right of and in proportion to his freehold lands within the ſame townſhip, that after ſuch — part thereof, ſhall be ſo allotted or ſet out, the ſaid commiſſioners ſhall ſet out and allot unto the ſaid Sir *W. W.* one full —— part of the reſidue and remainder of the ſaid commons and waſte lands, in lieu of, and in recompenſe for the tithes or tenths to which the ſaid Sir *W. W.* is entitled, out of the ſaid commons and waſte lands as impropriator thereof, and that from and after the ſeveral allowances ſhall be ſo made by the commiſſioners to the ſaid Sir *W. W.* as aforeſaid, all and every the reſidue or remaining parts of the ſaid common and waſte lands, ſhall be ſo allotted to the ſaid *J. W. W. D.* and *S. W.* parties hereto, and the ſeveral other freeholders and copyholders within the ſaid townſhip of — in proportion to the value of their ſeveral and reſpective eſtates and intereſts therein, due regard being had as well to the quality and contiguity of ſituation of ſuch their eſtates and intereſts as to the quantity thereof reſpectively. AND alſo to their ſeveral and reſpective rights of common, in and upon the ſame commons and waſte lands. AND it is further agreed, that for the better carrying the ſaid intended act into execution, and for the more ſpeedy cultivation and improvement of the ſaid commons and waſte lands ſo to

Allotment to be allotted to the lord as ſuch.

A further portion in lieu of tithes.

The reſidue to be divided amongſt the freeholders and copyholders in proportion to their intereſts.

Commiſſioners to be empowered to ſettle diſputes &c.

be encloſed, the ſaid commiſſioners ſhall be inveſted with full powers to examine and finally ſettle and determine all differences and diſputes which may ariſe, as well reſpecting all claims relative to the common right of all or any of the ſaid parties on the ſaid common and waſte lands intended to be incloſed, as alſo between leſſors or landlords, and their tenants or leſſees in reſpect to the fencing and improving the allotments which ſhall be made in purſuance hereof, as in ſuch caſes are uſual and cuſtomary, provided that any leſſee be not compellable to pay more than 4 per cent. per annum, for the money which may be expended by his leſſor in the proſecution of the ſaid intended incloſure and improvements, or matters relating thereto. AND it is further agreed, that perſons being tenants for life, only of the ſaid incloſed premiſes, ſhall have power under the direction of the ſaid commiſſioners to convey their reſpective allotments, by way of mortgage for raiſing money to defray their ſhares and portions of the expences, which ſhall be incurred under the ſaid intended act, provided the money ſo to be raiſed do not exceed — per acre, on their ſaid allotments reſpectively, and be paid and payable to the ſaid commiſſioners, or as they ſhall direct for the purpoſe aforeſaid. AND further, that the expences incurred in obtaining the ſaid act, as alſo ſubſequent expences occaſioned in carrying the ſame into execution, ſhall be ſuſtained and paid by the ſaid Sir *W. W. J. W. W. D.* and *S. W.* and other the ſeveral freeholders and copyholders, and perſons intereſted in the ſaid commons and waſte lands as aforeſaid, in proportion to the va-

Tenants for life empowered to mortgage their allotments, to defray expences.

Expences in obtaining and executing the act, to be borne proportionably.

INCLOSURE.

lue of the portions of and in the ſaid commons and waſte lands, which each perſon intereſted therein ſhall have allotted to him, her, or them reſpectively; Provided always, that ſuch of the ſaid freeholders and copyholders as ſhall produce accurate ſurveys or admeaſurements of all or any part of their reſpective freeholds or copyholds, eſtate or intereſts to the ſatisfaction of the ſaid commiſſioners, ſhall not be liable to contribute to the expence which may be incurred in ſurveying ſuch parts of the ſaid commons or waſte lands as ſhall be comprehended in ſuch ſurveys. AND it is further agreed, that in the ſaid act there ſhall be inſerted all ſuch neceſſary, proper and uſual clauſes and proviſos for carrying this agreement into execution according to the intent and meaning of the parties hereto, and particularly for enforcing the fenceing the ſeveral allotments, and preſerving ſuch fences when made from being deſtroyed, by ſheep or otherwiſe, as in ſimilar caſes are cuſtomary, ſo that ſuch clauſes and proviſos, or any of them do not tend to vary, alter, or deſtroy any of the articles or agreements herein contained. PROVIDED alſo, that nothing in this agreement or the ſaid act ſo to be obtained, ſhall, or ſhall be conſtrued to prejudice the right of the ſaid ſir *W. W.* in or to the ſeigniory, royalties, fiſheries, cuſtoms, ſervices, or other his manorial rights within the ſaid townſhip or hamlet of ——, except as to the right of common and right of ſoil therein. AND it is hereby further declared and agreed, that all ſhares and allotments to be made out of the ſaid commons and waſte lands ſo to be encloſed, ſhall be

Parties having ſurveys of their own not to pay towards the expence of ſurveying.

Uſual clauſes to be inſerted in the act.

Saving as to the manorial rights of the lord.

The allotments to be of the ſame nature as the eſtates, in lieu of which they are made.

deemed to be of the ſame tenure with the freehold and copyhold eſtates, or lands within the ſaid townſhip or hamlet of ——, or any of them to which, or in right whereof ſuch allotments ſhall be made, and that a clauſe for ſecuring the ſame ſhall be inſerted in this act. AND it is further agreed that all incroachments that have been made upon the ſaid commons and waſte lands or any part thereof, and been peaceably enjoyed for the ſpace of 20 years and upwards laſt paſt (and for which any fine, rent, or amerciament has within that period been paid to the ſaid ſir *W. W.*) by any perſon or perſons entitled to right of common upon the ſaid commons and waſte lands for upwards of 20 years, without having paid any fine, rent, or amerciament to the lord, ſhall be deemed the excluſive property of ſuch perſon or perſons. AND all incroachments made within the ſpace of 20 years laſt paſt, and ſuch as have had the fences thereof proſtrated within that ſpace of time ſhall be deemed as if the ſame had never been incloſed, and ſhall be allotted by the commiſſioners agreeable to the articles for that purpoſe above-mentioned. AND it is hereby further agreed, that *R. S.* and *B. J.* be commiſſioners, and *G. G.* and *D. W.* ſhall be ſurveyors under the ſaid act. THAT the commiſſioners ſhall execute an award of which there ſhall be two parts, the one to be lodged in the church at ———, and the other in the Court of King's Bench, *Weſtminſter*. In witneſs, &c.

INCLOSURE.

Proviſion as to incroachments.

Appointment of commiſſioners who are to execute the award.

DISTRIBUTION.

* *An Agreement between Brothers and Sisters to make an equal Distribution of the Residue of their Father's Effects, notwithstanding any contrary Appointment to be made by their Mother, in pursuance of a Power given to her for that purpose.*

Recitals.

WHEREAS [Recital of the Will of the Father of the Parties, by which the Residue of his Estate was bequeathed to the Wife for Life, with Power for her to appoint amongst the Parties in such manner as she might think proper.]

AND WHEREAS to prevent any litigation or dispute, arising after the decease of the said mother of the parties, relative to the said residuary share or shares of the estate and effects of their said father deceased, as also to testify the affection they respectively bear towards each other, they, the said parties, are desirous, and have agreed, to divide the residuary estate and effects of the said testator amongst themselves, in equal shares and proportions, notwithstanding any contrary or other disposition which may be made thereof by their said mother, by virtue of the said recited power or otherwise. Now these presents witness that, for the preventing all litigation, dispute, or controversy, by or between the said parties, or any or either of them, in case of decease of their said mother, respecting the residuary estate and effects of their said father deceased, or any part thereof; and in order to testify and perpetuate the natural love and affection which they mutually bear to each other, and also in consideration of the sum of — to each of them, paid by the other of them, THEY,

Witness that the parties agree to divide the residuary property of their father equally between them.

the ſaid (*parties*) do hereby for themſelves ſeverally and reſpectively, and for their ſeveral and reſpective heirs, executors, and adminiſtrators, (and alſo the ſaid —, one of the ſaid (*parties*) for the ſaid — his wife, her heirs, executors, and adminiſtrators, covenant and agree to and with each other, and the executors, adminiſtrators, and aſſigns of each other, in manner following: that is to ſay, that as to, for, and concerning all and ſingular the goods, chattels, debts, monies, ſecurities for money, and other the reſiduary eſtate and effects of the ſaid father, deceaſed, given, bequeathed, or left in and by the ſaid hereinbefore in part recited will (ſave only and except the ſaid contingent legacies of — ſtock, chargeable thereon, to each of them the ſaid (*parties*) the ſame, and every part thereof, ſhall be taken, received, held, and enjoyed, by them the ſaid (*parties*) their executors, adminiſtrators, and aſſigns reſpectively, in equal parts, ſhares, and proportions, ſhare and ſhare alike, notwithſtanding every or any deed, deviſe, will, teſtament, or codicil, inſtrument, or inſtruments, in writing; or other gift, grant, bequeſt, limitation, or appointment whatſoever, which now is, or are, or which at any time or times hereafter, ſhall, or may be exiſting, or be made, executed, or publiſhed thereof, or of any part thereof, by the ſaid (*mother*) or any other perſon or perſons, at her requeſt, by her direction, or on her behalf, to the contrary, either under or by virtue of the ſaid in part recited will of the ſaid (*father*) deceaſed, or any deviſe, clauſe, authority, power, or direction therein contained otherwiſe, howſo-

DISTRIBUTION.

Notwithſtanding any other appointment by the mother.

DISTRIBUTION.

ever, and that in like manner as if no ſuit or any other deed, will, bequeſt, grant, gift, limitation, or appointment of her the ſaid (*mother*) was ever made, or had ever exiſted. AND further, the ſaid parties do hereby for themſelves, ſeverally and reſpectively, and for their ſeveral and reſpective heirs, executors, and adminiſtrators, covenant and declare, and agree to and with each other in manner aforeſaid, all and every ſum and ſums of the ſaid deviſe, legacy, bequeſt, gift, grant, limitation, and appointment, which at any time or times hereafter ſhall and may be made, given, limited, or appointed, to, or in favour of them the ſaid (*parties*) or any, or either of them, or the child or children of any or either of them by the ſaid (*mother,*) or from, or by reaſon of which they, any, or either of them, ſhall, or may, directly, or indirectly, receive or be entitled to, or might or could, had theſe payments not been made, or have ſo received, or been entitled to any beneficial intereſt or intereſts whatſoever, whether the ſame or any part thereof be given, bequeathed, or appointed, on account or lieu of all or any part or proportion of the reſiduary, or other eſtate and effects of the ſaid (*father,*) deceaſed, or of any ſavings or accumulations thereof, or as part, or portion, of the whole of the proper money, eſtate, or effects, of the ſaid (*mother,*) herſelf, the ſame and every part thereof, ſhall, within three months after the deceaſe of the ſaid (*mother,*) or as ſoon thereafter as lawfully can be relinquiſhed, given up, and brought unto hotch-pot, or otherwiſe rendered and conſidered

Covenant by the parties that each of them will relinquiſh any appointment made by the mother in his favour.

as one entire and aggregate ſum, to be equally divided, applied, and apportioned, unto and amongſt them the ſaid *(parties,)* their executors, adminiſtrators, and aſſigns, reſpectively, ſhare and ſhare alike, any thing in ſuch deed, will, gift, or appointment, contained to the contrary thereof notwithſtanding. PROVIDED always, that in caſe any ſuch ſum or ſums of money, legacy or legacies, eſtate or intereſt, as aforeſaid, ſhall be given, bequeathed, limited, or appointed, to or in favour, or for the benefit of any one or more of the child or children, if any or either of the ſaid parties to and in ſuch ſort, as that the party or parties whoſe child or children ſhall be ſuch donee, grantee, legatee, appointee, cannot, either in law or in equity, defeat or controul the legacy or legacies, gifts, bequeſts, eſtates, or intereſts, ſo given, bequeathed, or appointed, or either of them, other than by means of theſe preſents, that then, and in ſuch caſe, the party or parties to whoſe child or children any ſuch beneficial intereſt aforeſaid, ſhall be given, limited, and appointed, his heirs, executors, and adminiſtrators, ſhall and will, within the ſpace of three months after the deceaſe of the ſaid *(mother,)* raiſe, pay, and make good, out of his and their own proper eſtate and eſtates, reſpectively, ſo much, and ſuch ſum or ſums, or other beneficial intereſt, or the due and juſt value thereof, as may be ſo given or bequeathed, limited or appointed, to his, her, or their, or any or either of their child or children reſpectively, ſo much thereof as may exceed in amount or value one third part or proportion, (the whole into three

DISTRIBUTION.

That each of the parties will pay out of his own private property, any part of the ſaid reſidue given to his children.

DISTRIBUTION.

equal parts being divided,) if the eſtate and effects of the ſaid (*mother*,) which ſhall be by her ſo given, bequeathed, limited, appointed, or left unto or amongſt the ſaid parties, any or either of them, in any ſuch child or children of them, or of any or either of them. AND for the due and juſt performance of this and all and every other the covenants, claims, declarations, and agreements, aforeſaid, according to the true intent and meaning thereof, and of the ſaid parties hereto, they the ſaid parties do hereby bind themſelves and their reſpective heirs, executors, and adminiſtrators, to each other, and the executors, adminiſtrators, and aſſigns, of each other, in the penal ſum of ——, to be recovered by action of debt, in any of his Majeſty's courts at *Weſtminſter*, or before any or either of the Judges of thoſe courts elſewhere, holding lawful cognizance and juriſdiction. AND furthermore, the ſaid parties do hereby ſeverally covenant, declare, and agree, in manner and form aforeſaid, that they the ſaid parties, and each of them, his, her, or their heirs, executors, and adminiſtrators, ſhall, and will, at any, and at all times hereafter, at the reaſonable requeſt of the other of them, his executors, adminiſtrators, or aſſigns, make, do, and execute, all and every ſuch other act and deed, acts and deeds, conveyances, and aſſurances, in the law whatſoever, for the further, better, and more effectually confirming theſe preſents, and carrying into complete effect and execution, the object and intent thereof, and of the ſaid parties thereto, as the counſel, or counſels, in the law of him,

Reſervation of penalty for performance of the agreement.

Covenant that the parties will execute further aſſurances, if neceſſary.

DISTRIBUTION.

Agreements to refer diſputes to arbitration.

her, or them ſo requiring the ſame, ſhall adviſe, or the ſaid party, or parties, ſhall reaſonably require. And laſtly, it is hereby covenanted, concluded, and agreed, by and between the ſaid parties to theſe preſents, and each of them, doth hereby accordingly for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, declare, and agree, to and with the other of them, his executors, adminiſtrators, and aſſigns, that if at any time any variance, controverſy, diſpute, doubt, or queſtion, ſhall ariſe or be made, by or between the ſaid parties, their executors, adminiſtrators or aſſigns, of either of them, deceaſed, or by or between any of them, and any other perſon or perſons claiming under any or either of them reſpectively, of or concerning any matter or thing whatſoever, contained in theſe preſents, or the meaning or conſtruction thereof, then, and in all and every ſuch caſe or caſes, or as often as the ſame ſhall happen, and before any ſuit or action at law or in equity, ſhall be commenced, brought, or inſtituted, by any of the parties or perſons between whom any ſuch variance, controverſy, doubt, diſpute, or queſtion, ſhall happen, and to prevent any ſuch ſuit or action being commenced, brought, or inſtituted, as far as the power of the parties hereto in that behalf now lies and extends; and in caſe the parties or perſons between whom ſuch queſtion or queſtions, differences, diſputes, or controverſies, ſhall ariſe, cannot agree to ſettle and determine the ſame between or amongſt themſelves, all and every ſuch queſtions, differences, diſputes, doubts, and controverſies, ſhall be

DISTRIBUTION.

referred and ſubmitted by the parties and perſons between whom the ſame ſhall have ariſen or ſubſiſt, to the conſideration, judgment, arbitrament, final determination, and award, of two competent judges, and indifferent perſons, to be named and appointed by and between the ſaid parties or perſons, the one to be named and appointed by the party perſon or perſons intereſted on the one ſide of ſuch queſtion or diſpute, together with any other or third indifferent perſon, whom ſuch arbitrators, ſo choſen as aforeſaid, ſhall (either previous to or after them, entering upon the conſideration of the matters to them referred,) for that purpoſe think proper to name, and the award of which three perſons, ſo to be named, or any two of them, ſhall be final, and concluſive, and binding, upon the parties or perſons between whom any ſuch matter or queſtion, doubt, diſpute, or controverſy, ſhall have ariſen or ſubſiſted, and the ſaid parties or perſons, their executors or adminiſtrators, ſhall and will attend ſuch arbitrators and umpire or third perſon, and acquaint them and him with the matters and things in queſtion, or difference between them and their ſeveral claims and allegations thereon, or in reſpect thereof, at ſuch time and place, and times and places as the ſaid arbitrators and umpire ſhall appoint, together with ſuch writings and evidences in their cuſtody or power reſpectively relating to or elucidating the matters in queſtion, as they, or any two of them ſhall require, to peruſe and inſpect. AND in order the more certainly and effectually to bind the ſaid par-

Parties ſhall attend the arbitrators when required.

Parties to enter into mutual

DISTRIBUTION.

ties to the obſervance and performance of the award and determination of the ſaid arbitrators and umpire, agreeable to the true intent and meaning of theſe preſents, and of the parties hereto, it is hereby further covenanted, declared and agreed, that the references of the parties, perſon or perſons between whom any ſuch differences, doubts or diſputes as aforeſaid, ſhall ariſe or ſubſiſt, ſhall be by reciprocal bonds, each in a ſufficient penalty, and under a proper conſideration, well and truly to ſtand, to abide, perform, fulfil, and keep the order, arbitration, final determination, and award of the perſons or arbitrators, and umpire ſo to be indifferently choſen and named as aforeſaid, or of any two of them, ſo that the ſaid arbitrators and umpire, or any two of them, do, and ſhall make their determination and award in writing, under their hands and ſeals, and have the ſame ready to be delivered to the parties or perſons to ſubmit thereto, within — days next after the day of the date of ſuch bond, and to make void the ſame as uſual in ſuch bonds, and which ſaid bonds ſhall be ſigned and interchangeably delivered by and between ſuch parties and perſons reſpectively, between whom any ſuch matters, doubts, queſtions or diſputes ſhall ariſe within — days next, after ſuch matters in queſtion ſhall ſo happen or ariſe, or after requeſt ſhall in that behalf be made in writing by any of the parties intereſted, under his, her, or their hand or hands, on pain to the party, perſon or perſons refuſing, or forfeiting and paying to the party, perſon, or perſons aggrieved, all coſts, damages and expences which

bonds for abiding the award of the arbitrators.

DISTRIBUTION.

Submiſſion to be made a rule of court.

ſhall or may happen, ariſe or be occaſioned by reaſon or in conſequence of ſuch refuſal, and of all actions and ſuits which ſhall be brought or commenced by ſuch party, perſon or perſons ſo refuſing, and further, that ſuch references and ſubmiſſions aforeſaid reſpectively, ſhall in purſuance of an act of parliament made in the 9th and 10th year of the reign of King William III. (entitled an act for determining differences by arbitration,) be made an order of the High Court of Chancery, or other the King's Courts at Weſtminſter, ſuch courts ſhall ſo pleaſe to order, and that any or either of the parties ſubmitting as aforeſaid ſhall be at liberty to apply to the ſaid court for ſuch order, and to inſtruct counſel to conſent thereto, for the other party, perſon, or parties ſubmitting thereto. In witneſs, &c.

END OF VOL. I.

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